

**Wisconsin Department of Natural Resources
Citizen Advisory Committee – Knowles-Nelson Stewardship Program**

**A Process for Review of
Determinations Made under s. 23.0916(5)(b), Wis. Stats.**

I. Issue

The Natural Resources Board (NRB) has been directed by s. 23.0916(5)(b), Wis. Stats., to develop a process for review of determinations made by the NRB that result in one or more nature-based outdoor recreational activities being prohibited on lands acquired by the Department of Natural Resources (DNR) or by organizations receiving a Stewardship grant. This paper is divided into two sections: review of DNR purchases subject to s. 23.0916(3)(a), Wis. Stats., and review of stewardship grants subject to s. 23.0916(2)(a), Wis. Stats.

II. Citizen Advisory Committee Comments

The Citizen Advisory Committee recommended a review process that was simple, clear and expedient. Grant applications should report on the public planning process utilized.

III. DNR Recommendations

1. Require that all future DNR feasibility studies and master plans incorporate an evaluation of the requirements of s. 23.0916(3)(a), Wis. Stats. These plans will provide the foundation for the DNR's land acquisition decision making process. Department plans will be updated on their current schedule and NBOA requirements will continue to be incorporated.
2. All DNR transactions subject to s. 23.0916(3)(a), Wis. Stats., will be reviewed by the NRB for approval. The "Green Sheet" for the project will provide information on planning, public comment; the DNR's evaluation of the need for prohibiting one or more nature-based outdoor recreational activities and maps sufficient to understand the context in which the proposal is being made.
3. All future grant applications subject to s. 23.0916(2)(a), Wis. Stats., will include a description of the public uses proposed for the project, nature-based activities proposed, including but not limited to hunting, trapping, fishing, hiking and cross-country skiing and a description of the public input process utilized. Applicants will also be required to complete and submit a checklist showing whether a NBOA will be prohibited or restricted by category.

Hunting – small game, waterfowl, turkey, big game (gun and/or archery)

Trapping – water traps, upland traps

Fishing – shore fishing, boat fishing

Hiking – trail only, no trail

Cross-country skiing – groomed trails, or no groomed trails

Local Units of Government can use their existing planning process as evidence of a public

process. NCO's will be asked to describe in their grant application either the plan or recognized planning process that was used to seek public input about the project. The description should include a section on the requirements of s. 23.0916 (2)(a), Wis. Stats., including any public input that was received during the planning process. In the event that a plan has not considered the five NBOA's, the project sponsor will be required to discuss the 5 NBOA's in the context of the plan. The application may also include information detailing what groups were talked to and what comments were received, formally or informally.

4. All grant applications subject to s. 23.0916(2)(a), Wis. Stats., will be noticed to the public and include the nature-based outdoor activities that will be available to the public if the grant is funded as proposed. The NBOA checklist will be posted on the web. The Department will also post any decisions made by DNR staff related to limiting NBOA's based on Public Safety, Usership Patterns or Unique Plant and Animal Communities. The comment period will be 15 business days. Objections to the proposed grant must be submitted in writing by an affected party. The party must describe how they are affected, the reason for the objection, including specifically why they believe the proposed restrictions on the property conflict with s. 23.0916(2)(b), Wis. Stats. During the review period the money for the grant will remain encumbered.

5. The Department will act on the objection within 15 days, or longer if agreed to by the grant recipient, and will consider the closing date and timeliness concerns of the grantee when acting. The Department will review the application and determine if one of the NBOA's is prohibited and if the objection is substantive, based on the preponderance of the evidence. If the Department makes a determination that the objection is not substantive, the Department will proceed with the grant and a letter shall be sent to the objector. Substantive objections to prohibitions will be reviewed by the NRB for their determination of compliance with s. 23.0916 (2), Stats. The Green Sheet for the project will provide information on what local planning process may have been used, what groups were involved, public comments received; the DNR's evaluation of the need for prohibiting one or more nature-based outdoor recreational activities and maps sufficient to understand the context in which the proposal is being made.

IV. Background

A. Review of Department Purchases (s. 23.0916(3)(a), Wis. Stats.)

The DNR is granted broad land acquisition authority under s. 23.09, Wis. Stats. This authority has been the foundation of the DNR's land acquisition program for decades. The DNR's day-to-day implementation of this statutory authority is influenced by many other Statutes and Administrative Codes too numerous and overlapping to mention here. The result of these guiding authorities is a review process that ensures a comprehensive planning process, public participation at a variety of stages, project review by DNR management and NRB, and Governor approval of individual transactions.

This process forms the basis for the review of decisions made under s. 23.0916(3)(a), Wis. Stats., and will be broken into the following stages:

1. Land acquisition project planning
2. Land acquisition project development
3. Land acquisition project approval

1. Land Acquisition Project Planning

The Department's land acquisition program is guided by two major planning requirements: feasibility studies and master planning.

Feasibility Studies. The feasibility study is the first step in establishing land acquisition authority. The feasibility study is also the DNR's mechanism for complying with Wisconsin's Environmental Protection Laws (ch. NR 150) and the public notice requirements of those laws. As part of the review process required under s.23.0916 (5)(b), Wis. Stats., the DNR's feasibility study process will evaluate the potential for a property subject s. 23.0916(3)(a), Wis. Stats., to accommodate all nature-based outdoor recreational uses. This evaluation will take into account the criteria for prohibiting one or more nature-based outdoor activities and will provide a thorough justification for the prohibition of any nature-based activity. As a part of the planning process, the proposal to prohibit any activity will be subject to extensive public review and the Feasibility Study will also be subject to approval of the NRB and the Governor. At the conclusion of the Feasibility Study process, the DNR will have a plan that becomes the foundation for all future planning, land acquisition, public use and land management activities that may occur on the property. These activities are addressed in greater detail in a Property Master Plan.

Master Planning. Master planning is a process that is completed for most department properties and determines how those properties will be managed, developed, and used by the public. A property's master plan must be consistent with the property's designation and associated purposes and benefits and be compatible with the area's ecological capability. Property designations - such as state park, state natural area, and state forest - are defined by state statute and establish the purposes and benefits of the property.

The master planning process offers interested persons and other governmental units reasonable opportunities for the discussion of information, ideas and concerns related to the management and public use of a property, and allows input prior to the department's preparation of master plan recommendations for NRB consideration. The NRB must approve all master plans. The Department will incorporate a review of the requirements of s. 23.0916(3)(a), Wis. Stats., into all future master planning efforts.

2. Land Acquisition Project Development

For the purpose of this paper, project development will be described as the process by which an individual property is proposed for purchase by the DNR. With the requirements of s. 23.0916(3)(a), Wis. Stats., incorporated soundly into the above

described planning stages DNR staff will be required to evaluate all land acquisitions based on all existing plans for the project. All transactions that result in the prohibition of one or more nature-based outdoor recreational activities will be routed through regional and central office management for approval by the Land Division Administrator prior to initiation of an appraisal. The “request to appraise” will expand on the reasons that a project prohibiting nature-based recreational activities should be considered by the DNR and will provide the basis for review and approval by the NRB and the Governor.

3. Land Acquisition Project Approvals

All land acquisition projects subject to s. 23.0916(3)(a), Wis. Stats., which prohibit one or more nature-based outdoor recreational activity will be presented to the NRB for approval. The transaction will be presented by “Green Sheet” to the NRB by DNR staff explaining the planning justification for the project, detailed analysis of how the project fits within existing plans and specific information unique to the property. The NRB meetings offer a final public review of the project before a final decision is made on the necessity to prohibit one or more nature-based outdoor recreational activities on a DNR land transaction subject to s. 23.0916(3)(a), Wis. Stats.

B. Review of Stewardship Grants (s. 23.0916(2) (a), Wis. Stats.)

The Knowles-Nelson Stewardship Program has two grant components: Grants to Nonprofit Conservation Organizations (NCO) and Grants to Local Units of Government (LUG). NCO and LUG each has specific sub-programs defined in statutes and administrative code that set the criteria for projects eligible for Stewardship funding. Public access to properties purchased in fee simple with Stewardship funding has been required by law -- s. 23.096(3)(bn), Wis. Stats. -- since the inception of the grant program. Since October 27, 2007, an additional review component was added to the grant process to administer the new public use requirements in s. 23.0916(2)(a), Wis. Stats. The NRB, through the *Interim Protocol*, set the standard for review of nature-based outdoor activities on fee simple grant purchases using Stewardship funds pending the development of administrative rules. Sections 1 through 4 below summarize the current grant application and review process.

1. Pre-application Process for NCO Grants

The majority of NCO projects grow out of collaborations at the regional level between DNR biologists, grant sponsors, and other partners including federal agencies, local governments and other NCOs. NCO proposals must be for land that is of statewide or regional significance. Most often proposals are for properties named in larger plans such as the *Land Legacy Report*, *Natural Heritage Inventory*, *Wildlife Action Plans*, and other accepted studies.

2. Application Review for NCO Grants

Once an application is received, the project proposal is formally submitted to the appropriate DNR resource biologist (fisheries, natural areas, wildlife) for review and a recommendation for funding. Upon receiving a positive recommendation, DNR grant staff then begin a due diligence process including many areas from environmental and historic assessments to title and appraisal review. (Section 4 below describes the review of nature-based outdoor activities as applied to both NCO and LUG projects.)

3. Application Review for LUG Grants

To be eligible for a LUG grant, the sponsor must have a completed Comprehensive Outdoor Recreation Plan that specifically identifies the project. All LUG applications are received one time each year, May 1st, and are competitively scored and ranked. In 2008, requests for LUG funds outweighed available fund by a 4:1 ratio. In each sub-program, grants are awarded to the top projects on the ranked list until the funds are exhausted.

4. Review of Nature-based Outdoor Activities Proposed for NCO and LUG Grant Projects

All land acquisition projects subject to s. 23.0916(2)(a), Wis. Stats., which propose to prohibit one or more nature-based outdoor activities are reviewed within the process defined in the *Interim Protocol*. The stated reason for the proposed prohibition is reviewed by DNR staff to determine if the prohibition is allowable under one of the 3 conditions set in s. 23.0919(2)(b), Wis. Stats., and further defined in the *Interim Protocol*. If the proposal meets one of the three conditions in the law and *Interim Protocol* allowing a prohibition, the project moves forward to the public notice phase.

When the public notice comment period is complete, DNR staff review comments received. If issues are raised that have not been considered in the initial review process, additional review occurs, including review by the CAES Division Administrator. If it is determined the public uses proposed conform to the requirements of the law and the *Interim Protocol*, the project moves forward in the grant award process.