



## State of Wisconsin \ NATURAL RESOURCES BOARD

### Memorandum

To: Natural Resources Board Chair Christine Thomas and NRB members  
From: Stewardship Subcommittee members John Welter (Chair), Jane Wiley  
and Preston Cole  
Date: June 19, 2008  
Re: Status of Rules Development for Knowles-Nelson Stewardship Program

This memorandum will report to the full NRB on the status of the Stewardship Subcommittee's work to date on issues relating to development of administrative rules for the changes to the Stewardship Program required by statutory revisions in Act 20, the 2007-09 State Budget Bill. The Subcommittee met today with DNR staff members and interested citizens, and discussed the questions we saw as key parts of the rules which should be addressed by DNR staff, DNR Secretary Matt Frank's office and a Citizens Advisory Committee (CAC) being invited by DNR Secretary Matt Frank.

The purpose of this work is to formulate administrative rules relating to public access to lands acquired with Stewardship funds for the purposes of "nature-based outdoor activities" (NBOAs). Those activities specifically include hunting, fishing trapping, hiking and cross-country skiing, but the statutory changes would allow the NRB, if it wished, to add other activities to the list.

The subcommittee held three listening sessions in April 2008 and invited public comment via mail, e-mail or other methods. Over 130 people testified and in all forms almost 500 communications were received. We were impressed with the range and depth of comments, and those comments provide us with a good sense of the concerns of people, organizations and governmental units about the pending Stewardship issues. Lands Bureau Director Steve Miller and other DNR staff have summarized questions raised at the hearings, and their summary is attached as Exhibit 1 to this memorandum. Attendees' and writers' comments were thoughtful and respectful of divergent viewpoints.

Our subcommittee's goal today was to help formulate questions to be addressed by the Citizens Advisory Committee in making its recommendations for the rules to be developed by staff and eventually brought to the NRB for review and approval.

Four key areas in the statutory language assign rule-making and decision-making authority on the Department and, in turn, the NRB. They are:

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1. Determining extent of access for Nature-Based Outdoor Activities (NBOA) on **nondepartmental** lands purchased with Stewardship Grants (sec. 23.0916 (2));
2. Determining extent of access for NBOA on **departmental** lands purchased with Stewardship funds (sec. 23.0916 (3));
3. Determining extent of access for NBOA on other lands acquired with Stewardship funding (sec. 23.0916 (5)(a)); and,
4. Process for reviewing determinations made under 1-3 above.

Another topic of discussion for the subcommittee was whether to enlarge the list of Nature-Based Outdoor Activities. In sec. 23.0916 (1) (b), the Legislature defined NBOA activities to mean “hunting, fishing, trapping hiking, cross-country skiing *and any other nature-based outdoor activity designated by rule by the department for purposes of this section.*” (Emphasis added.) It would appear that statutory language confers on the department and NRB the discretion to designate other activities as NBOA. During the listening sessions some speakers urged that both motorized off-road recreation [ATV only?] and equestrian activities be added to the list, while others urged that such activities not be added. *The Subcommittee discussed this question and was not inclined to recommend that any activities be added, but agreed that the CAC may consider the question and make a recommendation if it felt such an addition was appropriate.*

The Subcommittee believes the following questions should be addressed by the CAC. In addition, we recognize and invite NRB members to submit additional questions they believe would help the rules carry out the direction of the Stewardship statute changes.

1. NBOA Access to State-owned properties: These properties are already accessible to the extent allowed on that type of property. For instance, State Wildlife Areas are open to all NBOAs, while in State Natural Areas such activities may be restricted. The staff should prepare a matrix showing all types of properties owned by the department for the people of Wisconsin (e.g., state parks, refuges, forests, IATF segments, natural areas, wildlife areas, hunting areas or fishing areas, wilderness areas, etc.) with the Y-axis showing whether the property is automatically open to NBOAs, or whether if they are not open, they could be instead “openable” under an NBOA analysis. For future purchases, should these properties automatically be subjected to an NBOA analysis with the initial question being, “Have NBOA activities have been allowed or restricted on this type of property in the past?” If restrictions on those activities have been applied to similar properties in the past, then how should the criteria of the statute be applied to future purchases?
2. Access for NBOAs on nondepartmental lands:
  - a. Defining “Usership patterns”: The Stewardship statutes require that the rules define, for both nondepartmental and departmental land purchases, the term “usership patterns”. How should this be defined?

Should past uses, planned uses, potential uses or even nearby uses of land be considered? What process should be developed to gather public input on the extent of potential conflicts among user groups? Should usership patterns be defined to include non-human users of land such as wildlife? Does “usership patterns” contemplate special events or regularly conducted activities, or both? School field trips? Bird counts? Bike or hiking trail use? Other concerns?

b. Local Units of government:

- i. Local Ordinances: If a potential land purchaser is a local unit of government (LUG), and that LUG (or another which shares jurisdiction over the land in question) has an ordinance in place restricting some or all NBOAs, should that local ordinance be a factor to be considered when the LUG applies for a Stewardship grant to help fund the purchase? What other alternatives might be developed in lieu of a bar?

(An existing statute, sub. 29.038 (“Local regulation of wild animals”) enables local units of government (LUGs) to pass ordinances restricting or prohibiting hunting, fishing or trapping within their limits, subject to certain review by DNR. Staff Attorney Tim Andryk told the committee that while the statute allows such restrictions or prohibitions, the Stewardship requirements for allowing NBOAs except in certain circumstances could prevent LUGs from obtaining Stewardship funding to buy such lands.)

- ii. Should LUG grants for acquisitions in urbanized areas be considered under any different criteria than for other parts of the state?
- iii. Should consideration (or ranking, where appropriate) for Stewardship funding be affected in any way in cases the proposed uses include limitations on any or all NBOAs?

b. NCO restrictions on NBOAs:

- i. If allowing something less than the full range of NBOAs is proposed, what should the analysis consider in regards to hunting seasons, hunting methods and limited or unlimited access?
- ii. Should small tracts of a certain threshold size automatically be considered as fitting under the “usership patterns” criterion, or should size of parcel be considered as a factor on a case-by-case basis?

c. Ice Age Trail purchases

(Note: DNR staff is currently developing rules to cover Ice Age Trail (IAT) properties for certain activities, notably hunting, which should be brought before the NRB later this year. Those rules could address some concerns, but until they are adopted in final form we will not have an exact idea of the interplay between treatment of IAT properties not owned by the state and the Stewardship statute.)

- i. Should IAT properties owned by the state continue to be regulated as State Parks and only opened to NBOA after conducting the analysis set out for considering opening hunting seasons in state parks?
  - ii. Alternatively, should the NRB take steps to have IAT properties be treated as a corridor of State Park /Trail and subject to state parks rules regarding hunting seasons, surrounded by adjacent property on which other NBOA activities may be permitted?
  - iii. NCOs may be seeking Stewardship money for other IAT purchases. How will those be affected by the Stewardship statute's access requirements? What process should be used for determining allowed restrictions on NBOAs on such lands? How should the rules consider inconsistent treatment of nearby IAT lands owned by the state or non-state owners?
- d. Deed restrictions or non-fee purchases: Where a selling landowner proposes deed restrictions which limit NBOAs, should the rules respect them, or disregard them, or tell an owner the DNR will conduct its own analysis of their justification? Should sellers of limited interests in land (e.g., rights of first refusal) be allowed to impose deed restrictions that limit NBOAs?

c. Appeal Process

- a. Where NBOAs are proposed to be restricted:
  - i. When should public notice and comment be required?
  - ii. Should some threshold be set for extent of restriction before notice-and-comment are required, or should they be required in every case? If threshold is favored, what criteria might it be based on?
  - iii. If notice and comment are required, at what point in the process should they be situated?

- iv. How do we minimize loss of potential stewardship purchases if faced with public objections to restrictions on NBOAs?
- v. Appeal to NRB/Stewardship committee: how to conduct promptly, openly and fairly?

d. Land Management considerations:

(Note: The following issues were raised by participants at the listening sessions, but generally would not seem to fall within the charge of the CAC or the staff developing the NBOA rules. However, this Subcommittee suggests that they be considered by the CAC insofar as they might be congruent with the CAC's charge, and further suggests that they be transmitted to the Stewardship Advisory Council for discussion at its next quarterly meeting.)

- 1. Responsibility for day-to-day lands management?
- 2. Responsibility for law enforcement on LUG/NCO/DNR lands?
- 3. NCO liability for Stewardship purchases needs to be clarified, especially relating to liability for directors and officers of NCOs for claims arising from NBOAs which are required to be allowed by statute.
- 4. Rules re: signage beyond statutory requirements?
- 5. Mapping: DNR lands mapping to include LUG/NCO purchases and restrictions?

e. Other areas we should consider rules recommendations?

Natural Resources Board members are welcome to offer additions, suggestions or other questions to this list.

The Subcommittee plans to continue to have contact with the staff and CAC this summer as the latter group begins its work.

Respectfully submitted,

John Welter, Subcommittee Chair  
Jane Wiley, Member  
Preston Cole, Member

Attachments to come:

1. Staff Summary of stewardship listening session questions
2. Statutory language regarding Stewardship Program from Budget Bill

Cc: NRB Chair Christine Thomas  
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Deputy Secretary Pat Henderson  
Lands Division Administrator Laurie Osterndorf  
Facilities & Lands Bureau Director Steve Miller  
Kathleen Wolski, DNR facilitator  
Debbie Martinelli, DNR CAES Community Financial Assistance Bureau Director