

NATURAL RESOURCES BOARD AGENDA ITEM

SUBJECT: Request adoption of Board Order PR-36-10; revisions to NR 1.29 and NR 45.10 relating to the management of department lands purchased for the Ice Age and North Country trails.

FOR: JANUARY 2011 BOARD MEETING

TO BE PRESENTED BY: Dan Schuller and Brigit Brown (Bureau of Parks & Recreation)

SUMMARY:

Board Order PR-36-10 repeals and recreates NR 1.29 and amends NR 45.10 to allow certain identified management activities to take place prior to master planning and to guide master planning for lands purchased by the department for the Ice Age and North Country trails, including State Ice Age Trail Areas.

The proposed rule addresses: construction of the Ice Age and North Country trails, dispersed camping, vegetative management, recreational uses (other than Ice Age and North Country trails), and the development of facilities such as parking lots. Hunting access is being addressed in a separate rule (s. NR 10.275 (4)).

The proposal went out for public comment in October and November of 2010. More than 100 comments were received, all were in support of the proposed rule.

The Ice Age National and State Scenic Trail and the North Country National Scenic and State Trail are partnership projects of state and federal government, non-profit organizations, and volunteers. The managing bureau for the two trails within the department is the Bureau of Parks and Recreation.

RECOMMENDATION: Adopt Board Order PR-36-10; revisions to NR 1.29 & NR 45.10 relating to management of lands purchased by the department for the Ice Age and North Country trails.

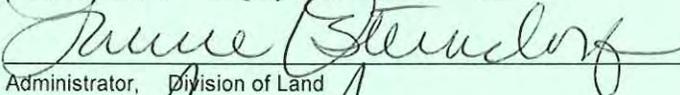
LIST OF ATTACHED MATERIALS:

- | | | | | | |
|----|-------------------------------------|---|-----|-------------------------------------|----------|
| No | <input type="checkbox"/> | Fiscal Estimate Required | Yes | <input checked="" type="checkbox"/> | Attached |
| No | <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes | <input type="checkbox"/> | Attached |
| No | <input type="checkbox"/> | Background Memo | Yes | <input checked="" type="checkbox"/> | Attached |

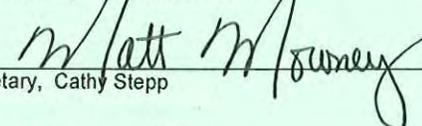
APPROVED:


Bureau Director, Bureau of Parks and Recreation

12-15/10
Date


Administrator, Division of Land

1/6/11
Date


Secretary, Cathy Stepp

1/10/11
Date

- cc: Laurie J. Ross - AD/8
- Laurie Osterndorf - AD/8
- Daniel Schuller - PR/6
- Brigit Brown - PR/6

CORRESPONDENCE/MEMORANDUM

DATE: 4 January 2011 FILE REF: PR-36-10: NR 1.29, NR 45.10

TO: Members of the Natural Resources Board

FROM: Cathy Stepp

SUBJECT: Background memo on request for adoption of board order PR-36-10

I am requesting Natural Resources Board (NRB) adoption of board order PR-36-10, modifications to Chapters NR 1 and 45, Wis. Adm. Code relating to management of lands for the Ice Age and North Country Trails.

Background

The Ice Age trail is a national and state scenic trail located entirely in Wisconsin. The primary purpose of Ice Age Trail Area properties (SIATAs) is to permanently protect segments of the Ice Age Trail.

The trail preserves and interprets Wisconsin's unique glacial features by means of a footpath. The trail and the state park system as a whole are established to provide recreation, preserve scenic and historical values, and for reasons of geological interest. When the trail is complete, it will span for more than a thousand miles across the state. The Wisconsin State Park System and its partners are continually working to open up new segments with almost 600 miles of trail open now. State statutes and congressional authorization establish that planning, location, development and maintenance of the Ice Age Trail are conducted in cooperation with the National Park Service and the Ice Age Trail Alliance, a statewide nonprofit organization which is established for the same purposes. Partnerships also exist with other state agencies, local units of government, and private individuals for the location and maintenance of trail segments. Most SIATA properties are purchased with a mix of state stewardship dollars and federal money through the National Park Service.

There are approximately 75 individual properties totaling about 7,000 acres which are identified as State Ice Age Trail Areas. Properties range in size from one acre to 1,200 acres with an average size of approximately 80 acres. The department owns many parcels outright but in some cases has purchased easements from private landowners.

Currently, there is little to no management of these properties allowed prior to master planning. At this time, any pre-master plan property management (e.g. invasive species management) has to be approved in writing by the Division Administrator. Additionally, there is specific guidance for master planning these properties (i.e. what it means for a property "to be managed for the Ice Age Trail"). The master planning process, including public involvement, will still occur and will address larger management issues for the property in the long-term.

This rule proposal would greatly facilitate the ability to manage these lands for their intended use (Ice Age Trail), and would allow our non-profit and federal partners to most effectively and efficiently assist us with that management.

Rule Summary

These rules would provide guidance on the management of lands purchased for the Ice Age and North Country trails. The proposed rules guide and permit some limited management of these lands such as selective timber harvest, invasive species removal, installation of the Ice Age and North Country trails, and minor support facilities and amenities such as small parking lots and informational kiosks, prior to master planning.

This proposal will compliment and reference the SIATA hunting access rules (s. NR 10.275 (4)), and will facilitate the master planning process (ch. NR 44) for these properties but is not anticipated to directly affect existing policy. These rules will provide guidance similar to what exists for other department property designations.

The NRB approved a similar proposal in 2006 for public hearing. The rule went to public hearing and was widely supported. However it was later determined that access for hunting and season structure needed to be specifically addressed for initial management of the State Ice Age Trail Area properties. The department developed a separate rule proposal to address these issues: board order WM-04-08 came to the NRB for approval in August of 2010 and accomplishes this. The non-hunting management the State Ice Age Trail Areas though was still not addressed. This rule proposal would take care of that.

Department staff and our Ice Age and North Country trail partners (National Park Service and the Ice Age Trail Alliance and the North Country Trail Association) will be impacted, as well as citizens wishing to enjoy the affected properties.

Our staff, with assistance from our partners, will be able to perform basic management activities to preserve the landscape of the properties (invasive species removal, tree plantation thinning, planting of former crop lands) and provide basic amenities (constructed trail, small gravel parking lots, and informational kiosks) to facilitate public access to the properties, without having to obtain written permission from agency management to perform these activities.

Modifications as a Result of Public Comments

The department is proposing several minor modifications as a result of the public comments. The first is the elimination of listed "secondary uses" for SIATAs.

Second is the addition of consideration of funding source restrictions when determining appropriate uses of a property. Hunting, in accordance with recently established rules, was added to the list of allowable non-Ice Age Trail related recreational uses.

Finally, modifications were made to allow for more flexibility for allowing horse and bicycle use, while requiring consideration of potential impacts to Ice Age Trail user experience. Motorized use was clarified as being allowable *as long as it does not interfere with the primary purpose of the property* (as defined by the rule).

Public Involvement

The public comment period ran from October 15 through November 5, 2010. A public hearing was held on November 3, 2010 in Fitchburg.

In total, 142 people commented on the rule proposal. All comments were in support (of the proposed rule). One hundred and thirty-four comments were received by e-mail. Three letters were received. There were nine oral comments received via public hearing. However, four people who supplied written testimony at the public hearing also sent in written comments (three via email and one letter). No comments (written or oral) were opposed to the proposed rule.

Eighteen comments were received from horse enthusiasts and horse groups who supported the changes but would like increased equestrian use on SIATAs. Most of the remaining comments came from Ice Age Trail supporters who were encouraged by the ability to allow initial, limited development to provide access to the properties, increased camping opportunities, and the limiting of vehicles near the trail reflected in the proposed rule changes. The National Park Service commented that they would like to see would like parallel language be created for the North Country Trail.

Response to Public Comments

Following is a sample of opinions expressed at the hearing and through written comment and the department's response.

I support the proposed order and ask that an allowance be added for horse riding to intersect, on a limited basis, with the Ice Age Trail tread to enable horse riders to traverse the Ice Age Trail land to connect to public or private horse trails adjacent to the Ice Age Trail land boundaries.

The proposed rule does allow for intersections of the Ice Age Trail with horse trails on a case by case basis. (Section (6) (b) 2. d.)

I ask the DNR to consider section (6) (b) 2. b. requirement that horse riding take place not less than 200 feet be viewed as a goal not a firm requirement thereby giving land managers the flexibility to modify the space from the trail tread as needed based on topography.

The department has modified the proposed rule to state that in general horse (and bicycle) use should take place at least 200 feet from the Ice Age Trail tread but that exceptions can be made depending on conditions.

The Ice Age Trail Alliance supports the strong statement of purpose for the Ice Age Trail in sections (2)(a) and State Ice Age Trail Areas in section (6)(a). By making the management of SIATAs more clear, it will increase the pace and ease of acquisition of SIATAs. We are confident that these new rules will make camping along the Ice Age Trail more readily available. There are a few aspects of the proposed rule that we would like to see amended prior to adoption. In section (3)(a), we request that the Ice Age Trail (on non-SIATA department lands) be defined as "...the Trail tread and the land 100 feet adjacent to both sides of the Trail tread." Furthermore, under (6)(b)2. b., the IATA requests that the distance from the Ice Age Trail to an allowable bike or horse path be increased to 500 feet. In open areas or leaf-off these other trails would harm the IAT user's experience. Under (6)(b)2. c., the IATA requests that no motorized uses be allowed on an SIATA, except for snowmobiles as already provided for under the

National Trail System Act. Also, remove hunting from NR 1.29 as that has been addressed by NR 10.275(4) and NR 45.09(10) already.

- The department believes that the current 50' corridor is a balance between protection for the Ice Age Trail on non-SIATA department lands and ensuring that those department lands on which the Ice Age Trail is hosted are able to continue to be managed for their primary purpose and in accordance with state statutes including ch. 23, Wis. Stats., and ch. NR 44, Wis. Adm. Code. On any department lands the Ice Age Trail traverses, the trail will be included in master planning and management decisions.
- The department has modified the proposed rule to state that in general horse (and bicycle) use should take place at least 200 feet from the Ice Age Trail tread but that exceptions can be made depending on conditions. Topography and site lines must be considered.
- The department agrees that motorized use must not negatively impact Ice Age Trail user experience and has modified the proposed language to reflect this.
- Hunting has been removed from NR 1.29 (1).

The National Park Service heartily endorses the proposed rule with a few changes. We recommend deleting the second sentence in NR 1.29 (1), addressing "secondary uses," because it is misleading and gives a false impression about hunting opportunities on these lands. We would like the addition of language to NR 1.29 specifically stating that easements are excluded from the operation of the hunting rules in NR 45 and NR 52. Also, emphasize lands purchased for the IAT and NCT using Federal financial assistance from the Land and Water Conservation Fund have a primary purpose that related to the IAT or NCT, not other trails. Just because a large tract of land is bought for the IAT or NCT, does not mean that there has to be other trails on it. Other trails cannot become a pattern or federal funding would be pulled. Continued cooperation is needed to make sure the proposed rules benefit the IAT and NCT.

- The department agrees that the second sentence of the proposed NR 1.29 (1) is superfluous. It has been deleted.
- Easements purchased by the department for the Ice Age Trail may be considered for hunting opportunities in accordance with s. NR 10.275 (4), Wis. Adm. Code.
- Language has been added to NR 1.29 (6) (b) 2. a. to clarify that funding sources must be considered when planning for the property.

The North Country Trail supports the changes and would like parallel language be created for the NCT. We suggest widening the distance of other trails from the IAT/NCT and to make sure hunting is not universally permitted on these lands. We strongly support the trail as primarily a footpath and also to allow camping along the trail.

The department plans to develop similar rules for the North Country Trail.

Rule Development

These rules were developed by the Bureau of Parks and Recreation with advice from the Bureaus of Facilities and Lands and Legal Services.

Small Business and Initial Regulatory Flexibility Analysis

The revisions to chs. NR 1 and 45, Wis. Adm. Code, pertain to property management. These rules are applicable only to certain designated lands owned by the department and impose no compliance or

reporting requirements, and will not have a significant economic impact, on small businesses. Therefore, under s. 227.19(3m), Stats., a final regulatory flexibility analysis is not required.

Legislative Council Rules and Clearinghouse Report

Comments from the Legislative Council Clearinghouse are reflected in the current proposed language with the exception of the request to change “horse” (use) to “horseback”, as the more general term “horse (use) is more inclusionary and descriptive of potential uses than the more restrictive term of horseback. No changes were substantive in nature (i.e. they did not alter the purpose or significantly change the language of the proposed rule).

Environmental Analysis

These rule revisions are a Type III action under Chapter 150, Wis. Adm. Code, and no environmental analysis is required.

Fiscal Estimate — 2009 Session

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number PR-36-10

Subject
 Management of State Ice Age Trail Areas

Fiscal Effect

State: No State Fiscal Effect
 Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs — May be possible to absorb within agency's budget.

Yes No

Decrease Costs

Local: No Local Government Costs
 Indeterminate

1. Increase Costs
 Permissive Mandatory
 2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
 4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others
 School Districts WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Chapter 20 Appropriations

20.370 (1) (ea), (mu), (my)

Assumptions Used in Arriving at Fiscal Estimate

This rule would provide the Department with new authority for managing Department of Natural Resources-owned properties acquired for the Ice Age and North Country trails. These rules will allow certain identified management activities to take place on acquired properties prior to the completion of master planning and without special permission from Department administration. Currently, after acquisition of a parcel of land designated as Ice Age or North Country trail, the Department must request permission to perform vegetative management or facility development work, such as invasive species management and installation of the trail. The Department receives federal funds from the National Park Service for management work on these properties. Approving this rule will increase the Department's ability to expend these funds in an efficient and effective manner, and will increase the window of opportunity to initiate necessary work on these parcels.

State Fiscal Effect --

The rule does not impose new requirements on the Department to perform work on these properties but would allow for increased flexibility to perform certain management activities where funds and available labor exist. Currently, much of this work is being done, or is proposed to be done by external partners, the Ice Age Trail Alliance and volunteers.

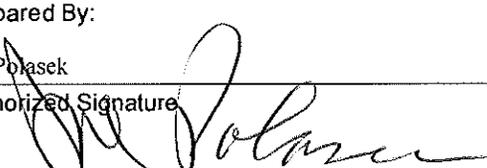
At this time, the special permission needed to perform management work on these properties requires Department staff time to develop the request for submittal to agency management. With these rules in place, that staff time would be decreased and could result in greater efficiencies at the program level.

Local Fiscal Effect --

These properties are wholly managed by the Department; consequently their approval would have no local fiscal effect. By increasing the ability to perform management of these properties to provide basic facilities (constructed trail, parking lot, e.g.), there may be an increase in use of these properties which may benefit local economies.

Long-Range Fiscal Implications

None. New properties will be able to be managed to basic standards upon purchase.

Prepared By: Joe Polasek	Telephone No. 266-2794	Agency Department of Natural Resources
Authorized Signature 	Telephone No. 266-2794	Date (mm/dd/ccyy) 12-29-10

Fiscal Estimate — 2009 Session

**Page 2 Assumptions Narrative
Continued**

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number PR-36-10

Assumptions Used in Arriving at Fiscal Estimate – Continued

Fiscal Estimate Worksheet — 2009 Session
 Detailed Estimate of Annual Fiscal Effect

Original Updated
 Corrected Supplemental

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number PR-36-10

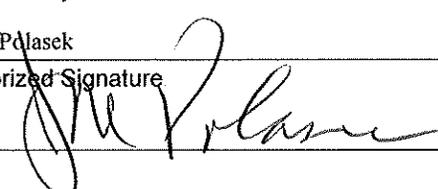
Subject
 Management of State Ice Age Trail Areas

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):
 \$0

Annualized Costs:		Annualized Fiscal Impact on State Funds from:	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations — Salaries and Fringes	\$	\$ -	
(FTE Position Changes)	(FTE)	(- FTE)
State Operations — Other Costs		-	
Local Assistance		-	
Aids to Individuals or Organizations		-	
Total State Costs by Category	\$	\$ -	
B. State Costs by Source of Funds			
GPR	\$	\$ -	
FED		-	
PRO/PRS		-	
SEG/SEG-S		-	
State Revenues	<small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	Increased Revenue	Decreased Revenue
GPR Taxes	\$	\$ -	
GPR Earned		-	
FED		-	
PRO/PRS		-	
SEG/SEG-S		-	
Total State Revenues	\$	\$ -	

Net Annualized Fiscal Impact

	<u>State</u>	<u>Local</u>
Net Change in Costs	\$ _____	\$ _____
Net Change in Revenues	\$ _____	\$ _____

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	12-29-10

Cost-Benefit Analysis
Wisconsin Department of Natural Resources
Administrative Rule Proposal
PR-36-10

01/05/2011

OVERVIEW

The proposed rule change:

The rule proposes that certain management activities for an Ice Age Trail parcel be permitted to take place without there having been master planning and certain other Department approvals before hand.

Benefits:

Will permit department staff; cooperating federal, state, and local agencies; and other organizations including nonprofit organizations, to engage in developing and managing a parcel earlier in the process than is currently permitted, in an effort to minimize unnecessary delay and department involvement, where this is advisable. It will encourage flexible response, local decision-making, use of volunteers, more timely application of management techniques (e.g., vegetative management), and responsiveness to private property owners involved in the process.

Costs:

It will provide flexibility in determining when to incur costs, to accommodate physical need and department funding situations, and will involve other agency and private organization participation.

Background: The Ice Age Trail is a national and state scenic trail located entirely in Wisconsin. At completion, the trail will be a thousand connected miles.

Situation: The Department of Natural Resources (department) acquires land for a variety of purposes (s. 23.09 (2) (d), Stats.), including the Ice Age Trail (sub. 10.). Generally, properties purchased for the Ice Age Trail and not associated with another property are given the designation *State Ice Age Trail Areas* (SIATAs). There are approximately 75 SIATAs throughout the state ranging from less than an acre to 1,200 acres.

Under Administrative Rule NR 44, department properties must first be master planned to determine how they will be managed, unless the property type has existing provisions in the Administrative Code to guide management in absence of a master plan. For example, management of State Wildlife Areas is guided by s. NR 1.51, Wis. Adm. Code, and the management of State Forests is guided by s. NR 1.24, Wis. Adm. Code.

The department is scheduling master planning efforts into 2020. There are very few SIATAs included on this schedule.

This Administrative Rule proposal will provide basic management guidance or “sideboards” for SIATA properties and limited development activities (such as installation of a primitive parking lot and construction of the Ice Age Trail) to facilitate public use of the properties for the reason that they were purchased (Ice Age Trail).

Authority to create this rule: ss. 27.01(2) (c) and (j), Stats.¹

Proposed solution: This rule proposal would facilitate the ability to manage these lands for their intended use (Ice Age Trail), and would allow our non-profit and federal government partners to most effectively and efficiently assist us with that management.

Activities such as trail construction will still be required to comply with all state and federal regulations (e.g. endangered resources and archeological reviews, water regulations).

Costs and Benefits: While it is certain that some costs and benefits have not been included, following is an estimation of the outstanding factors proposed for consideration.

I. Costs:

A. Short-term:

1. Labor.

- i. Staff time. A local property manager will need to oversee the property and approve any management activities. Engineering approvals for any structures (e.g. parking lot, boardwalk), endangered resources approvals for any management work would also be required. These costs, without the proposed rule, would instead be born over the long-term and likely at a greater cost as the absence of basic management sideboards for the property would require that each property master plan start “from scratch” instead of from the basic guidelines laid out in the proposed rule.

2. Materials.

- ii. Signage. The department will need to provide basic signage for the property letting the public know what activities are allowed and what the rules are for the property. These costs, without the

¹ Sections 27.01(2) (c) and (j), Stats., state that the department may “make, and as rapidly as possible carry out, plans for the development of the state parks, including the layout and construction of roads, trails, camping and picnic areas, buildings, water and sewer and other sanitary installations, and the development of all other facilities considered necessary for the preservation of special features or the overall usefulness of any state park” and may “promulgate rules necessary to govern the conduct of state park visitors, and for the protection of state park property, or the use of facilities, including the use of boats and other watercraft on lakes or rivers within the limits of a state park, and the use of roads, trails or bridle paths”.

proposed rule, would instead be encountered at a later date (as signage is required on all properties).

B. Long-term:

1. Development.

- i. Changes to development as a result of master planning. The master planning process may result in a change to the long-term management of the property; subsequently investments that have been made in the property may be lost. The rule has been written to minimize this possibility by only allowing limited management activities that are agreed to by a variety of people (department staff, Ice Age Trail partners).

2. Revenues.

- i. Camping. It is possible that offering camping opportunities for long-distance hikers may take away lodgers from established campgrounds and overnight facilities; however it is more likely that offering these legal, primitive camping areas will instead detract from the illegal camping currently occurring along the trail. (With very few exceptions, established lodging is too great of a distance from the Ice Age Trail to be suitable for Ice Age Trail hikers. When lodging is available within a reasonable distance from the trail, no dispersed camping will be necessary and will not be provided.) The primitive camping opportunities facilitated by these rules will offer no amenities (such as potable water, vehicle access, electricity) and no regular management: they are simply a legal place to pitch a tent for one night while on a long-distance hike. This is a preferred experience for long-distance hikers.

II. Benefits:

A. Short-term:

1. Access.

- i. Opening the properties for their intended use. The guidance provided by these rules provides the ability for the property to be open for, and to facilitate, their primary intended purpose: Ice Age Trail use², within a relatively short amount of time. The funding used to purchase these properties comes from a variety of sources, both public and private. The department has responsibility to provide timely and appropriate access to these properties. Streamlining the process for managing these properties for the purpose for which they were purchased (Ice Age Trail) is sensible given the timeline for the intensive master planning process.

² This is further defined in the proposed rule, and in the *Ice Age Trail Vision Statement and Attributes* (available as an exhibit to the department's Memorandum of Understanding for the Ice Age Trail ("Triad Agreement")). This document can be viewed online: <http://dnr.wi.gov/org/land/parks/trails/pdf/iatmou.pdf>.

Opening these properties for their intended use will provide unique recreation opportunities (primitive, more solitary, silent sport-based experiences) that will keep recreaters here in Wisconsin and will draw visitors from out of state. Currently, Wisconsinites looking for this kind of experience locally travel to places like the Upper Peninsula of Michigan (Porcupine Mountains Wilderness) and the Boundary Waters in northern Minnesota.

3. Flexibility.

i. Decision making.

- Allowing some basic decision-making to occur at a more local level (via these rules) will make decisions faster and less bureaucratic.
- One advantage, in a real sense, is that this kind of flexibility will encourage others to work with the department, including people wanting to give, sell, or give easements on, property, and people who will donate work (e.g. volunteers).

ii. Landowners. Lessening the process for opening a property for Ice Age Trail may encourage landowners to give or sell land because the property will be more quickly able to achieve utility.

4. Labor and capital.

i. Volunteer labor. Allowing some management of the property upon purchase lets the department take advantage of the frequent offers of local volunteers to assist with property management. When told that they must wait for a master plan, volunteers have lost interest in the property and turned their efforts elsewhere.

ii. Partners. Both of the department's partners on this project (National Park Service and the Ice Age Trail Alliance) are very supportive of the proposed rule and have committed to providing financial and other (volunteer, e.g.) support for management of these properties. The partners provide funding for the majority of management work performed on SIATAs. This rule will assist our partners in carrying out their missions with regard to the trail.

B. *Long term*:

1. Labor and capital.

i. Vegetative management. Allowing basic vegetative management upon purchase of the property decreases the cost to create the desired vegetative condition: the cost to restore a property to desired vegetative condition increases with time as the property, for example former agricultural land, is allowed to sit without management (i.e. the cost for restoration of native vegetation is less if the land is restored immediately following agricultural use instead of allowed to go fallow).

2. Tourism.

- i. Goods & services businesses. Distance hikers tend to buy supplies locally (a backpack carries only a few days' worth of supplies; hiking the entire Ice Age Trail will take approximately three months). Towns all along the trail serve as centers of commerce for trail users seeking food and other supplies. There are also demands for additional distance-hiker services such as shuttles and gear repair. As an example, the "Superior Shuttle" on the Lake Superior Hiking Trail in Minnesota has been in business for more than ten years and employs three to four drivers.

III. Net Cost-Benefit

While it is not possible to quantify costs and benefits with precision, it is fair to say, with low risk, that approval of the proposed rule will clearly result in a net benefit, in both the short and long runs. From purely a State cash outflow perspective, the State will always have control of whether and when to spend. With the rule in place, the State will have additional, reasonable flexibility, and will have in place new inducements for others to act (e.g., to private property owners to give property for the Trail) and participate (e.g., to non-profits to partner with the DNR in this enterprise).



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Terry C. Anderson
Legislative Council Director

Richard Sweet
Clearinghouse Assistant Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 10-118

AN ORDER to amend NR 45.10 (1) (m) and (n); to repeal and recreate NR 1.29; and to create NR 45.10 (1) (a) 6, relating to the Ice Age and North Country Trails.

Submitted by DEPARTMENT OF NATURAL RESOURCES

09-29-2010 RECEIVED BY LEGISLATIVE COUNCIL.

10-26-2010 REPORT SENT TO AGENCY.

RNS:REL

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]
Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Laura D. Rose
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CLEARINGHOUSE RULE 10-118

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated September 2008.]

2. Form, Style and Placement in Administrative Code

a. In s. NR 1.29 (1), a title should be added to this subsection. [See s. 1.05 (1), Manual.] The same problem occurs in subs. (6) (b) 1., (6) (b) 4., and (6) (b) 4. b. 3).

b. In s. NR 1.29 (2), the title should be changed to solid capital letters in accordance with the format under s. 1.05 (2), Manual. The titles throughout the rule should be checked and changed, if necessary, to conform to the Manual.

c. In s. NR 1.29 (3) (a), "defined in par. (3) (b)," should be deleted.

d. In s. NR 1.29 (3) (c), "is as defined in" should be changed to "has the meaning given in". The same problem occurs in sub. (3) (d). Also, the terms that are defined should be in quotation marks. Paragraph (a) should be preceded by "In the section:" and the four defined terms should be alphabetized.

e. In s. NR 1.29 (6) (a) and (b) 3., "should be" should be changed to "shall be".

4. Adequacy of References to Related Statutes, Rules and Forms

a. The reference in s. NR 1.29 (3) (c) to "ch. NR 44" should be to the specific subunit in that chapter.

b. In s. NR 1.29 (6) (b) 1., "par. (2) (a)" should be changed to "sub. (2) (a)". Similar changes are needed in ss. NR 1.29 (6) (b) 2. a. and e. and 45.10 (1) (m) and (n).

c. In s. NR 1.29 (6) (b) 2. a., “paragraphs (6) (b) 2. b. through e.” should be changed to “subd. b. to e.”.

d. In s. NR 45.10 (1) (a) 5., “s. NR 1.29 (2)” should be changed to “s. NR 1.29 (3)”.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the statutes interpreted and explanation section and the statutory authority and explanation of agency authority section of the rule analysis prepared by the department, “s. 27.01 (2) (c) (j)” should be changed to “s. 27.01 (2) (c) and (j)”. In the statutory authority and explanation of agency authority section of the rule analysis, “This section grants” should be changed to “These statutes grant”.

b. In s. NR 1.29 (1), it appears that the colon should be replaced by “, including”; however, if it is the department’s intent to limit the pedestrian uses on these trails to the types listed in the rule, then “the following types of” should be inserted before “pedestrian use”.

c. In s. NR 1.29 (5) (a), “Secretary of the Department of the Interior” should be changed to the lower case. [See s. 1.01 (4), Manual.]

d. In s. NR 1.29 (6) (b) 1., “Ice Age Trail objectives, as defined in” should be changed to “The purpose of the Ice Age Trail as provided in”. In addition, “objectives and purpose” should be changed to “purpose”.

e. In s. NR 1.29 (6) (b) 2. b., “horse” should be changed to “horseback”. In sub. (6) (b) 2. c., the comma should be deleted and “that use is” should be inserted before “more than ¼ mile”.

f. In s. NR 1.29 (6) (b) 2. e., no mention is made of the secondary uses authorized under sub. (1) of the rule. Those secondary uses may need to be added to this rule subsection in accordance with the department’s intent.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES
BOARD AMENDING RULES

The Wisconsin Natural Resources Board proposes an order to repeal and recreate s. NR 1.29, create s. NR 45.10 (1) (a) 6., and amend ss. NR 45.10 (1) (m) and (n), relating to the Ice Age and North Country Trails.

PR-36-10

Analysis Prepared by the Department of Natural Resources

Statutes Interpreted and Explanation: In promulgating this rule, s. 27.01 (2) (c) and (j), ss. 23.09 (2) (d) 10. and 12., and s. 27.01 (10) (f), Stats., have been interpreted as providing the department with the authority to make these changes to provide guidance and direction on the management and development of lands for the Ice Age and North Country Trails.

Statutory Authority and Explanation of Agency Authority: The statute that authorizes the promulgation of this rule order is s. 27.01 (2) (c) (j), Stats. (in addition to the general authority under ss. 227.10 and 227.11, Stats). These sections grant rule making authority to the department to establish rules governing properties. Further, ss. 23.09 (2) (d) 10. and 12., Stats. authorize purchase of lands by the department for the Ice Age Trail and North Country Trails, s. 27.01(2)(c), Stats. instructs the department to plan for these properties, s. 23.17 (4), Stats. authorizes the development of department lands for the Ice Age Trail, and s. 27.01 (10) (f), Stats. allows the department to waive camping fees. All rules promulgated under this authority are subject to review under ch. 227, Stats.

Related Statute or Rule: There are no state rules or statutes currently under promulgation that directly relate to the provisions that are proposed in this administrative order.

Plain Language Rule Analysis: The Bureau of Parks and Recreation recommends promulgating administrative rules that modify a section of s. NR 1.29 related to management of lands purchased for the Ice Age and North Country Trails.

Currently, there are no rules to specifically guide the management and development of this classification of land.

These rules would provide property managers and other department staff guidance on the management of lands purchased for the Ice Age and North Country trails. The proposed rules guide and permit some management of these lands such as selective timber harvest, invasive species removal, installation of the Ice Age and North Country trails, and minor support facilities and amenities such as small parking lots and informational kiosks.

The Bureau of Parks and Recreation also recommends promulgating administrative rules that modify a section of s. NR 45.10 to allow camping along the Ice Age and North Country Trails for long-distance hikers.

Federal Regulatory Analysis: These state rules will help to carry out federal conditions placed on lands purchased for the Ice Age and North Country Trails using federal funds.

Comparison with Rules in Adjacent States: These rule change proposals do not represent significant policy changes and, when comparisons can be made, do not differ significantly from surrounding states. The Ice Age Trail is unique to Wisconsin and does not have a counterpart in

surrounding states. Michigan and Minnesota manage the North Country Trail in a similar manner to what is being proposed.

Summary of Factual Data and Analytical Methodologies: The department owns approximately 75 properties which would be affected by this proposed rule. The rule would allow the department and trail partners to proceed with development and management of these properties and to ensure appropriate public access in accordance with the intended use of the properties.

Anticipated Private Sector Costs: These rules, and the legislation which grants the department rule making authority, do not have a significant fiscal effect on the private sector. Additionally, no significant costs are associated with compliance to these rules.

Effects on Small Business: These rules are applicable only to state properties and impose no compliance or reporting requirements for small businesses, and no design or operational standards are contained in the rule.

Agency Contact Person: Brigit Brown, 101 South Webster St., PO BOX 7921, Madison, WI 53707-7921. (608) 266-2183, brigit.brown@wisconsin.gov.

Deadline for Written Comments: The deadline for written comments is November 5, 2010. Comments may also be submitted electronically at the following internet site: <http://adminrules.wisconsin.gov>.

SECTION 1. NR 1.29 is repealed and recreated to read:

NR 1.29 Ice Age and North Country trails.

- (1) **FOOTPATHS.** The Ice Age Trail and North Country Trail shall be managed primarily as footpaths for pedestrian use: walking, hiking, backpacking, snowshoeing, and ungroomed cross-country skiing.
- (2) **PURPOSE.**
 - (a) The purpose of the Ice Age Trail is to provide premier hiking and backpacking experiences and to preserve and interpret Wisconsin's glacial landscape and other natural and cultural resources in areas through which the trail passes.
 - (b) The purpose of the North Country Trail is to provide premier hiking and backpacking experiences as it meanders through a variety of northern landscapes, linking scenic, natural, historic, and cultural areas in seven states from New York to North Dakota.
- (3) **DEFINITIONS.**

In this section:

 - (a) "Dispersed camping area" has the meaning given in s. NR 45.03 (9c).
 - (b) "Ice Age Trail" has the meaning given in s. 23.17 (2), Stats. When the Ice Age Trail is within a property other than a State Ice Age Trail Area, the Ice Age Trail for management purposes shall be the treadway, which is the trail tread and the land 25 feet adjacent to both sides of the trail tread.
 - (c) "Master plan" has the meaning given in ch. NR 44.03 (8).
 - (d) "State Ice Age Trail Areas" mean lands purchased by the department for the Ice Age Trail under the authority of s. 23.09 (2) (d) 10., Stats., except when purchased as part of another department project.

(4) *Dispersed camping and trail construction.* On State Ice Age Trail Areas and on lands purchased for the North Country Trail, construction of the Ice Age and North Country trails and dispersed camping areas are authorized prior to the approval of a master plan for the property as allowed by department criteria and approval processes.

(5) *Vehicles.*

(a) Vehicles shall be prohibited on the Ice Age trail except as provided for in s. NR 45.14 (1), which shall also apply to this section, and except for snowmobiles where deemed appropriate by the secretary of the department of the interior and the managing authority responsible for the segment as permitted by 16 U.S.C. 1241.

(b) Vehicles shall be prohibited on the North Country Trail except as provided for in s. NR 45.14 (1), which shall also apply to this section.

(6) *State Ice Age Trail Areas.*

(a) *Purpose.* Ice Age Trail Areas permanently protect lands to provide for segments of the Ice Age Trail; preserve Wisconsin's glacial landscape features and other natural and cultural resources associated with the trail route; and, where possible, offer a primitive atmosphere of relative solitude and perceived remoteness where visitors may experience a quiet connection with nature. In suburban areas or other developed areas, and on smaller parcels of land, not all of the Ice Age Trail Area purposes may be realized; however, they shall be maximized to the degree practicable at the site.

(b) *Recreational Use and Management*

1. *Objectives.* The purpose of the Ice Age Trail as provided in sub. (2) (a), and further defined by the Ice Age Trail Vision Statement and Attributes, shall receive primary consideration in the master planning for State Ice Age Trail Areas. All uses included in sub. (1) and sub. (2) (a), and facilities that directly support these uses shall be allowed. Compatible, non-Ice Age Trail related objectives may be accommodated; however, they may be limited in scope of time and location to avoid interference with primary Ice Age Trail purpose.

Note: The Vision Statement and Attributes is part of the Memorandum of Understanding between the National Park Service, Ice Age Trail Alliance (née Ice Age Park and Trail Foundation), and the department concerning the Ice Age Trail.

2. *Allowable non-Ice Age Trail related recreational uses and facility development.*

a. To determine the suitability of secondary uses as listed in subd. (6) (b) 2.

b. to d. on a State Ice Age Trail Area, the specific characteristics of each Ice Age Trail Area, including the size, topography, vegetation, and sustainability, shall be considered. Conditions specific to funding sources used for the property shall also be upheld.

b. Depending on conditions including topography and sight lines, bicycling and horse riding may take place on a State Ice Age Trail Area. Location of these trails shall not detract from the purpose of the property as provided in sub. (6) (a). In general, such use shall take place not less than 200 - 500 feet away from the Ice Age Trail tread.

c. Snowmobile, and ATV and similar motorized recreational use may be established if conditions including topography and sight lines allow the use to exist without detracting from the purpose of the property as provided in sub. (6) (a), provided that use is more than ¼ mile from Ice Age Trail tread, and if the

solitude and quiet experience of the Ice Age Trail user is not compromised by that use.

d. Intersections of motorized trails and the Ice Age Trail may not be allowed, except as provided in sub. (5). Intersections of non-motorized non-hiking trails and the Ice Age Trail are avoided; exceptions may be allowed on a case-by-case basis when necessary to accommodate or maintain a larger, regional trail system.

e. Hunting in accordance with ss. NR 10.275 (4) and NR 45.09 (10).

f. No coincident use of the Ice Age Trail tread may be allowed for any uses other than those primary uses listed in sub. (1) and sub. (2) (a).

3. *Vegetation Management.* The desired future vegetation condition is natural communities composed of native plants and animals. Prescriptive management plans shall be designed to meet the goals of the desired future condition. When developing the vegetation management component of the property master plan, the specific characteristics of each State Ice Age Trail Area shall be considered, including the pre-settlement vegetation, soil types, and feasibility of the department and its partners to maintain the ecosystem.

4. *Pre-master plan.* Prior to the approval of the property master plan, management activities and uses on State Ice Age Trail Areas shall be limited to the following:

a. *Recreational Use and Facility Development.*

- 1) All uses and activities allowed in subs. (1) and (4).
- 2) Pre-existing crossings of the Ice Age Trail by designated state or county trails.
- 3) Hunting in accordance with ss. NR 10.275 (4) and NR 45.09 (10).
- 4) Motorized vehicles use as described in sub. (5).
- 5) Small, lightly developed parking areas, such as a gravel parking lot, may be constructed.
- 6) Signage may be installed for marking the Ice Age Trail; regulatory uses; property management, including boundaries; and general property or Ice Age Trail information, such as a kiosk.

b. *Vegetation Management.* Native community types existing at the time of acquisition shall be retained or enhanced.

- 1) Vegetative management shall focus on enhancing the scenic and natural values along the Ice Age Trail. Cropped lands may be planted with a permanent grass cover. Tree plantations may be thinned to create a more natural appearing condition.
- 2) Invasive species may be removed or controlled.
- 3) Any proposed forest management requires consultation with the managing bureau of the property to ensure that scenic values along the Ice Age Trail are being preserved or enhanced.

SECTION 2. NR 45.10 (1) (a) 5. is amended and NR 45.10 (1) (a) 6. is created, and NR 45.10 (1) (a) (5), and (1) (m) and (n) are amended to read:

NR 45.10 Camping.

(1) GENERAL.

(a) Camping is prohibited except as follows:

1. Within designated camping areas.
2. On state-owned islands in the Mississippi river.
3. On state-owned islands and sandbars in the Lower Wisconsin state riverway.
4. On other state-owned islands outside of state forest boundaries when the island is posted open to camping.
5. In state Ice Age trail areas as defined in s. NR 1.29 (3) (d) and on lands purchased for the Ice Age Trail by those hiking the Ice Age trail where the trail segment is posted open to camping.
6. On properties purchased for the North Country Trail by those hiking the North Country Trail where the trail segment is posted open to camping.

(m) Camping permits are not required and payment of daily camping fees is waived when camping on state-owned islands in the Mississippi river or state-owned islands or sandbars in the Lower Wisconsin state riverway, on other state-owned islands outside state forest boundaries when the island is posted open to camping, in properties described in sub. (1) (a) 5. and 6., designated campsites on the Willow flowage and designated watercraft campsites in the northern state forests, Chippewa flowage, Menominee River natural resources area or the Turtle-Flambeau scenic waters area except a camping permit, reservation and fee are required on campsites B3, B4, B5, B6, B7 and B8 in the Turtle-Flambeau scenic waters area.

(n) Camping is restricted to one day only at designated watercraft campsites in northern state forests, and in properties described in sub. (1) (a) 5. and 6. up to 3 days as posted on state-owned islands outside state forest boundaries, to 3 days on state-owned islands and sandbars in the Lower Wisconsin state riverway and to 10 days at designated campsites on the northern flowage properties. Camping at these locations is restricted to persons and their equipment arriving by watercraft only.

SECTION 3. Effective dates. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

SECTION 4. Board adoption. This rule order was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____

(SEAL)