

## Issue Summary

The DNR ILF Program is interested in changing statute language so that public access for hunting, fishing, trapping, hiking, and cross-country skiing is optional for each site and so that it may be restricted while wetland communities are being developed.

As currently read, public access is required on all ILF project sites, limiting interest from some private landowners who may otherwise be interested in selling a conservation easement or fee title land to the ILF Program.

## Statutory Language

s. 281.36 (3r) (e):

...Under the in lieu fee subprogram, the wetlands that benefit from the subprogram shall be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any combination thereof, but the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community...

## Statutory Language Change Options

### Option 1

Under the in lieu fee subprogram, the wetlands that benefit from the subprogram ~~may shall~~ be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any combination thereof, but the department may establish reasonable restrictions on the use of the land by the public in order to protect public safety or to protect a unique plant or animal community.

### Option 2

Under the in lieu fee subprogram, the wetlands that benefit from the subprogram shall be open to the public for hunting, fishing, trapping, cross-country skiing, or hiking or any combination thereof. The in lieu fee subprogram may establish temporary restrictions on the use of the land by the public until the end of the monitoring and credit generating period of the mitigation project or establish permanent restrictions upon request by the landowner.

## WWCT Conservation Easement Language

Recitals Section:

**WHEREAS**, the Parties agree that the Easement Area shall be open to the public for hunting, trapping, fishing, hiking, and cross-country skiing after site establishment has been completed or no later than three years after this easement is recorded, whichever comes first.

11/16/2021

Wetland Study Council

ILF Public Access Issue Discussion Points

### Discussion Points

- The DNR ILF Program has had 2 landowners end partnership discussions due to public access requirements (estimated 50+ discussions with landowners)
- Hunting is the main concern for private landowners when contemplating an ILF project
- There are no federal regulations from USACE or EPA requiring or restricting public access or public use of mitigation sites
- There are no state statutes or regulations concerning public access on private mitigation bank or permittee-responsible sites in Wisconsin
- ILF funds are received from wetland permittees, mostly private and utility development projects, so not state dollars that would require public access outside of the ILF statute language in s. 281.36.
- Nationally, only some of the Ducks Unlimited ILF programs require public access:
  - Colorado and South Dakota DU Programs require access, NY/VT DU Program does not require public access because of past trespassing issues.
  - Hoods Canal Program, Washington, specifically prohibits public access, as required by their USACE district.
  - The Nature Conservancy (TNC), which has ILF programs in OH, VA, ME, UT, encourages but does not require public access at their ILF sites.
  - No state-administered programs require public access
- DNR currently has 5 out of 15 project sites that are privately owned, and 2 of those are owned by a consultant planning to donate to a land trust or municipality when the project is completed.
- \*DNR Wildlife, nonprofit, and municipality owned ILF sites have variable existing public access requirements and restrictions:
  - DNR Wildlife property sites are already open to the 5 nature-based uses
  - Nonprofit owned sites allow access but may restrict hunting due to municipal code or their own property rules
  - Some ILF sites have hunting restrictions due to municipal ordinances.
- Other Wisconsin programs and public access:
  - DNR Managed Forest Law – MFL property may be “Open” or “Closed” to public access, depending on landowner preferences. Up to 320 acres per landowner per municipality may be designated as “Closed”
  - Knowles-Nelson Stewardship – KNS manages 11 different grant programs and public access is required of grant recipient properties Public access on KNS funded sites may be restricted under special circumstances including due to municipal ordinances or for public safety with NRB approval.
  - DATCP Farmland preservation – none of the farmland preservation programs operated by DATCP require public access on enrolled or designated farm properties.