

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

SUBJECT: Request approval for the prohibition of one nature-based outdoor activity (hunting) to protect the public safety on land to be purchased with Knowles-Nelson Stewardship funds – Groundswell Conservancy, Dane County

FOR: January 2022 Board meeting

TO BE PRESENTED BY: Pam Rood, Stewardship Grant Manager

SUMMARY:

Per s.23.0916(2) Wis. Stats., and consistent with s. NR52.05 Wis. Adm. Code, the Board must determine that the prohibition of hunting is necessary to protect public safety on the 1.27-acres in the Village of Black Earth, Dane County.

The Department has made the determination that prohibition of hunting is necessary to protect public safety due to:

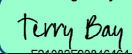
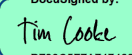
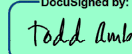
- Proximity to residential buildings.
- The size, shape and location of the parcel
- Village ordinance prohibitions

The property will provide opportunities for passive recreation such as hiking, picnicking, nature enjoyment, fishing, cross-country skiing, trapping, and snowshoeing.

RECOMMENDATION: Approve the Department’s determination that the prohibition of hunting is necessary to protect public safety on 1.27 acres to be acquired by the Groundswell Conservancy, Dane County.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- Background memo
- Maps

Approved by	Signature	Date
Terry Bay, Bureau Director, Facilities and Lands	DocuSigned by:  <small>F21002F9004040...</small>	12/16/2021 3:29 PM C
Tim Cook, Division Administrator, Internal Services	DocuSigned by:  <small>D792C5F7A747400...</small>	12/16/2021 3:43 PM C
Preston D. Cole, Secretary	DocuSigned by:  <small>0793A75A427640D...</small>	12/20/2021 9:48 AM C

cc: Board Liaison – AD/8

DS


by Todd Ambs

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CORRESPONDENCE/MEMORANDUM

DATE: December 14, 2021
TO: Natural Resources Board
FROM: Preston D. Cole, Secretary



SUBJECT: Request approval for the prohibition of nature-based outdoor activities – Groundswell Conservancy acquisition

In accordance with s. 23.0916(2) Wis. Stats., the Department requests the Board approve the prohibition of one nature-based outdoor activity on 1.27-acre of land in the Village of Black Earth, Dane County. The Department proposes to award a Knowles-Nelson Stewardship grant to the Groundswell Conservancy for the purchase of land on which hunting will be prohibited by local ordinance and state hunting laws.

I. PROJECT DETAILS

Project Sponsor: Groundswell Conservancy
Sellers: David Cooper
Grant sub-program: Urban Green Space

Project description: The 1.27-acre parcel is comprised of three residential lots along Black Earth Creek, a class 1 trout stream. The primary purpose of the project is to acquire the land to create a Village park to improve paddler access to Black Earth Creek. This proposed acquisition is a partnership between Groundswell Conservancy and the Village of Black Earth. Groundswell will purchase the property and then donate it to the Village for development of a local park. The subject properties include buildings that were damaged during the August 2018 flood and have not been occupied since then due to damage. Maps are attached as Appendix A

Current/prior use of property: No public use currently. The 1.27-acres is part of three private residential lots.

Proposed public uses: The primary purpose of the project is to acquire the land to create a Village park to improve paddler access to Black Earth Creek. Additionally, the project could one day be part of the proposed Black Earth Creek Trail connecting the Village with a bike/hike trail extending from Middleton to Mazomanie.

The Black Earth Creek acquisition project, once developed for local park, will be available to the public seven days per week, and 365 days per year. Users will be able to hike, cross-country ski, trap, snowshoe, fish, nature watch, and access the Black Earth Creek. The Department's analysis of the permitted nature-based outdoor activities is attached in Appendix B.

Property management: The Black Earth Creek acquisition will be managed in the short term by Groundswell Conservancy. Once the property is donated, the Village of Black Earth, Parks and Public Works Departments will assume the operation and maintenance of the property.

II. NBOA DETERMINATION

Nature-based outdoor activities (NBOAs) are defined in s. NR 52.02(7), Wis. Adm. Code, as hunting, trapping, fishing, hiking, or cross-country skiing. Groundswell Conservancy working in partnership with the Village of Black Earth propose to prohibit hunting, on the Black Earth Creek property. The Regional Public Safety Team, Nick Webster, Safety Specialist Warden, Jeremy Plautz, Regional Warden, and Cheryl Housley, Project Manager, determined that the prohibition on this activity is necessary to protect public safety. This determination is based the following factors:

- The primary purpose of the project (public local park and creek access);
- Village of Black Earth ordinances prohibiting discharging and carrying dangerous weapons;
- The size, shape, and location of the parcel;
- Proximity to residential homes;
- State of Wisconsin hunting laws

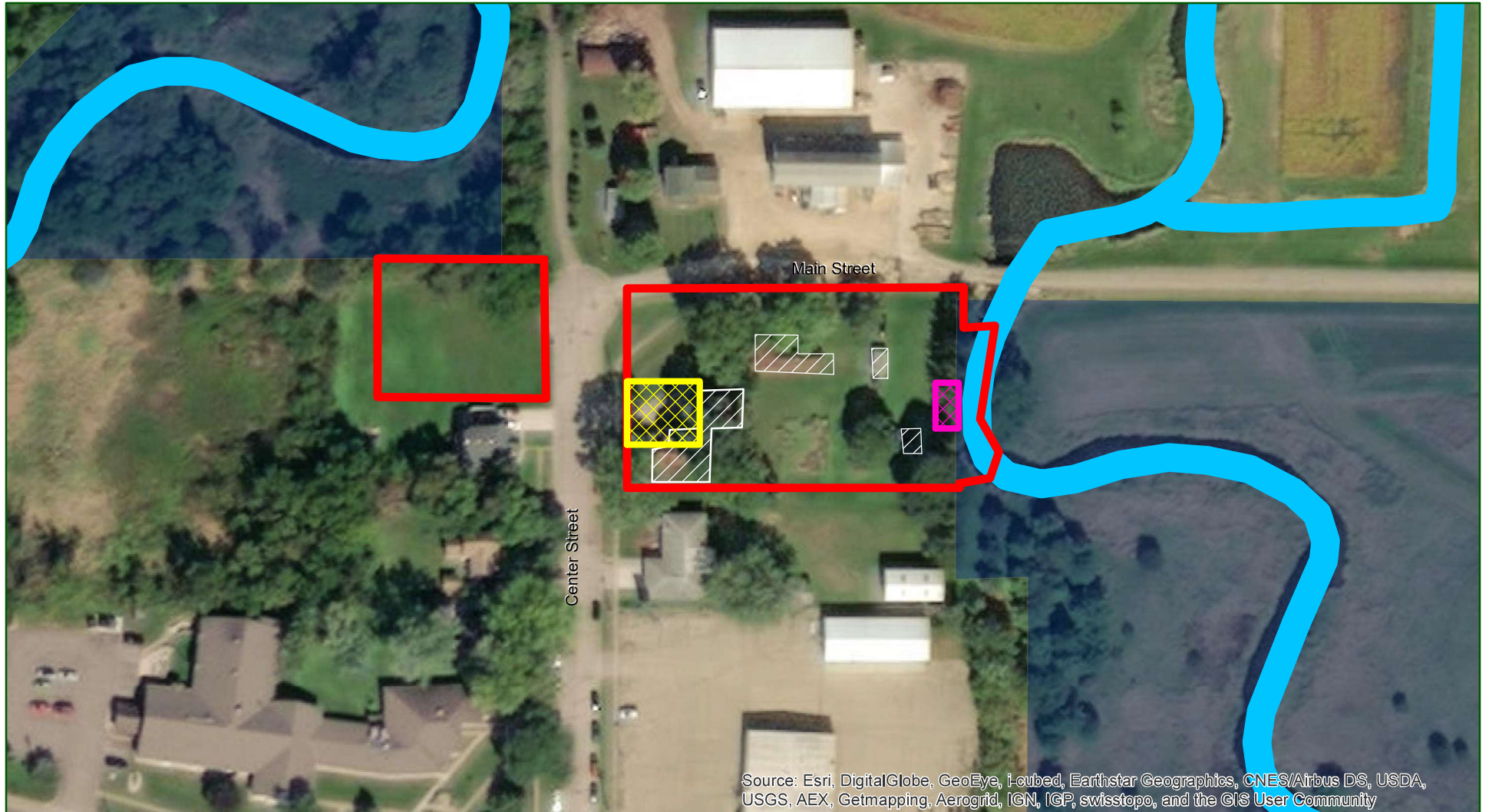
State law prohibits the discharge of a firearm within 300 feet of any building devoted to human occupancy without the permission of the owner or occupant. The properties are located in a high density area of residential homes, businesses and schools within the Village limits.

The Department posted public notice about this determination on GovDelivery on November 9, 2021. One comment was received inquiring about parcel location, no comments were provided in support or opposition. The public notice and comment summary submitted may be found in Appendix C and D attached to this Green Sheet.

III. RECOMMENDED:







 <p style="font-size: small; margin: 0;">DocuSigned by: Terry Bay F21082F90846464...</p>	12/16/2021 3:29 PM CST
Terry Bay, Bureau Director Bureau of Facilities and Lands	Date

 <p style="font-size: small; margin: 0;">DocuSigned by: Tim Cooke D792C5F7A747460...</p>	12/16/2021 3:43 PM CST
Tim Cooke, Administrator Internal Services Division	Date



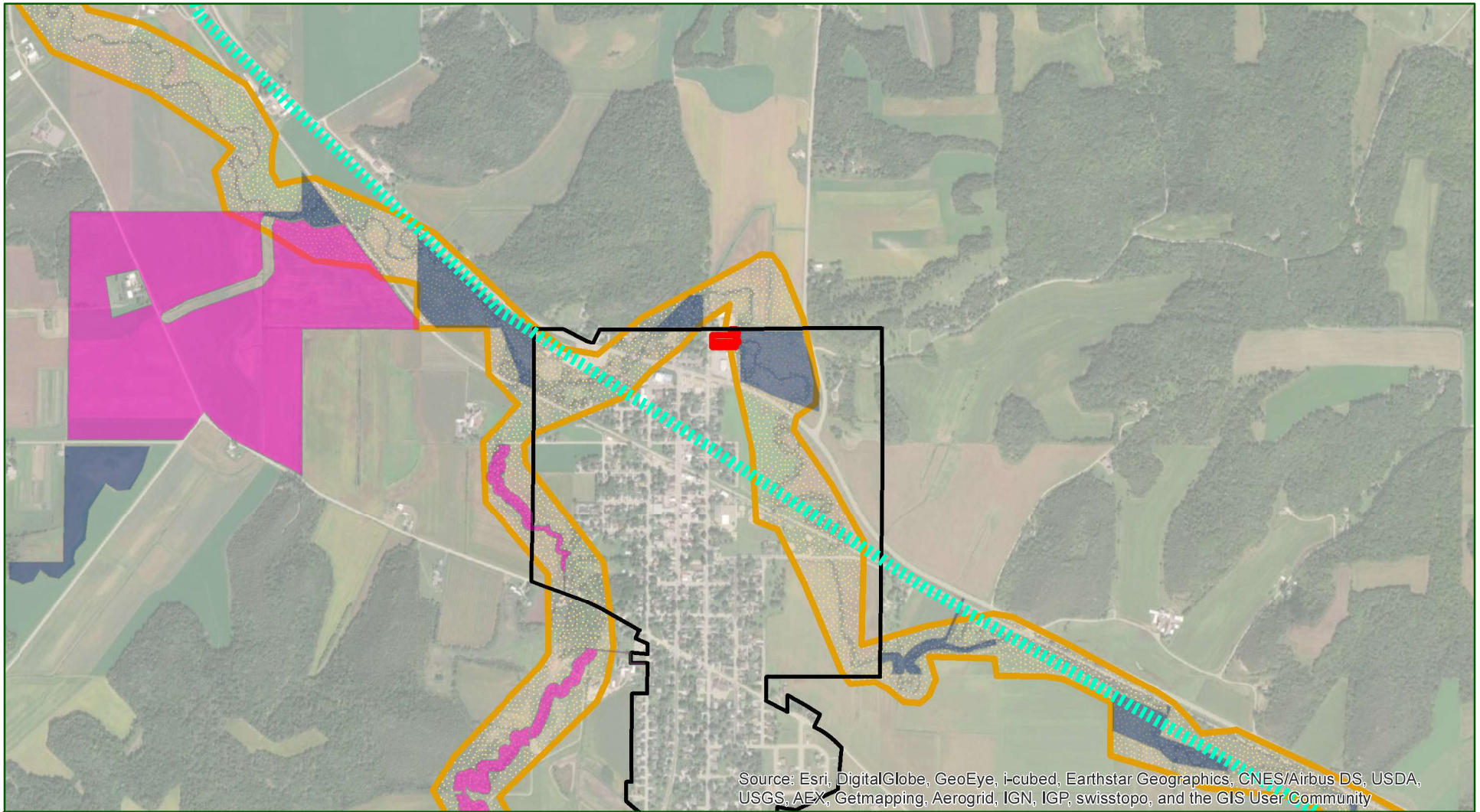
0 280 560 1,120 Feet

Project Site Plan, Cooper Property. Village of Black Earth







-  Cooper Parcels
-  Black Earth Creek and Tributaries
-  Flood-damaged Buildings to be Removed
-  Proposed Parking Area
-  Proposed Boat Launch
-  DNR Black Earth Creek Fishery Lands



Project Boundary Map. Cooper Property, Village of Black Earth



Source: Esri, DigitalGlobe, GeoEye, i-cubed, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

-  Cooper Parcels
-  Groundswell Projects
-  Village of Black Earth
-  DNR Lands
-  DNR Black Earth Creek Fishery Area Boundary
-  Black Earth Creek Trail Concept (site specific mapping not completed)

0.75

1.5

3 Miles



GROUNDSWELL
CONSERVANCY

Knowles-Nelson Stewardship Grant Program

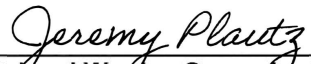


**Public Safety Team Analysis of
Nature Based Outdoor Activities on
Projects Purchased with
Stewardship Grant Funds**

Rev. August 2012

NOTE TO DNR STAFF: *This completed form will be attached to the NBOA notice that the DNR will publish when considering a request for Stewardship grant funding. Do not list location information for the subject property or the seller's name because WI courts have held that this information is confidential until land ownership has changed hands. CF Staff completes the project proposal section prior to submitting to public safety team for review.*

PUBLIC SAFETY REVIEW TEAM

 _____ Regional Recreational Safety Warden	11/01/21 _____ Date	 _____ Regional Warden Supervisor	11/4/2021 _____ Date
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PROJECT DESCRIPTION

Applicant/ Sponsor: Groundswell Conservancy	Year of Application: 2021
Project Name: Cooper Acquisition	Primary Purpose: <input type="checkbox"/> Habitat Areas <input type="checkbox"/> Local Parks <input type="checkbox"/> Natural Areas <input type="checkbox"/> Urban Rivers <input type="checkbox"/> State Trails <input checked="" type="checkbox"/> Urban Greenspace <input type="checkbox"/> Streambank Protection

Project Description: Groundswell Conservancy – Black Earth Creek Cooper Acquisition (partnering with Vil. of Black Earth): Acquire approximately 1.27 acres of land composed of four tax parcels to create public access to Black Earth Creek within the Village of Black Earth. The property includes buildings that were damaged during the August 2018 flood and have been abandoned. The property provided frontage on the creek and is adjacent to state-owned land that is part of the Black Earth Creek Fishery Area. Black Earth Creek is a Class 1 trout stream. Class 1 streams are high-quality trout waters that have sufficient natural reproduction to sustain populations of wild trout, at or near carry capacity.

The primary purpose of the project is to acquire the land to create Village park land where access to Black Earth Creek can be improved with a paddler's put-in/take-out. Additionally, the project could one day be part of the proposed Black Earth Creek Trail connecting the Village with a bike/hike trail extending from Middleton to Mazomanie. This acquisition is a partnership between Groundswell Conservancy and the Village of Black Earth. Per the draft Memorandum of Agreement between Groundswell and the Village, Groundswell will attempt to purchase the property. If Groundswell is successful at acquiring the property, it would donate it to the Village of Black Earth.

FINDINGS OF FACT:

The Groundswell Conservancy is looking for Stewardship funding for the purpose of acquiring four lots with a total of 1.27 acres. One of these parcels are on the west side of Center street while 3 are east of Center street. Of the three parcels east of Center street, 2 directly abut the west bank of the Black Earth Creek and the WI DNR Black Earth Creek Fishery Area. The three are all located south of Main street and north of 619 Center Street.

The parcel adjacent to the west side of Center street are located approximately 40 feet south of WI DNR Black Earth Creek Fishery Area Property and north of 612 Center Street.

The primary purpose of purchasing the land is to produce Village park land to access Black Earth Creek. Plans include to allow access and a paddler's put-in/take-out. Additionally, the project could one day include a bike/hike trail extending from Middleton to Mazomanie.

The flood damaged buildings on the property would likely require extensive repair or removal.

The area is located within 300 feet of private residences, as well as businesses. The Village of Black Earth Elementary school is located approximately 1,700 feet of the properties.

Though there has not been a legal survey to confirm approximate measurements, this proximity to the schools places the property boundaries very close to or potentially within designated "school zone". State law restricts the use and possession of firearms as well as hunting within these designated school zones.

The SCR NBOA Public Safety Team has determined that the prohibition of hunting on this 1.27-acre parcel is necessary to ensure compliance with the Village ordinances and potentially current state hunting laws, firearm discharge laws, state school zone laws and the need to protect the public's safety.

It is noted this parcel will expand hiking, fishing, canoeing and kayaking access to the residents and tourists of the Village of Black Earth area.

Parcel Size, Shape, and Topography: Describe the size, shape, and topography of the parcel and how it relates to public safety for this activity on this site.

The size of the subject property is 1.27 acres and consists of four parcels located on the northern edge of the Village of Black Earth, north of Hwy 14. The property is a residential lot, improved with a residence and outbuildings. Lots are fairly level, sloping downward toward creek and have street frontage.

Proposed NBOA Prohibition or Restrictions

SEE PAGE 3

HUNTING			
	Gun Prohibition/Restriction	Archery Prohibition/Restriction	List Dates/Seasons (opening and closing)
Waterfowl	Prohibited	Prohibited	
Small Game	Prohibited	Prohibited	
Turkey	Prohibited	Prohibited	
Large Game	Prohibited	Prohibited	

Public Safety Team Narrative:

The high density of residential homes, business' and schools in the vicinity of the proposed property would make legal hunting impractical.

These two lots, totaling 1.27 acre of riverfront property are located entirely within the village limits, within 300 feet of buildings devoted to human occupancy. State law prohibits the discharge of a firearm within 300 feet of any building devoted to human occupancy while on lands that you do not own, without the permission of the owner or occupant.

State law also restricts both the possession and the discharge of firearms within 1,000 feet of school grounds as well as the hunting within 1,700 feet of any school grounds. This 1.27 acres is located approximately 1,700 feet from the Black Earth Elementary School grounds.

The Village of Black Earth has several ordinances which restrict the legal hunting or discharge of a hunting tool within the village.

Due to the vicinity of the property to buildings devoted to human occupancy, state law restrictions alone would virtually eliminate the legal hunting on the entire 1.27 acres.

It is the opinion of SCR NBOA Public Safety Team the prohibition on all hunting is necessary to ensure compliance with current state firearm possession, firearm discharge and hunting laws. This will limit user conflict within the village and to ensure the safety of the public.

Public Safety Factors Considered: Check all that apply.

The sponsor is within its own municipality boundary (Groundswell intends to transfer prop. to Vil. Black Earth)

Parcel is within 100 yards of building devoted to human occupancy

Parcel is within 50 feet of the center line of highways & roads

Parcel is within 1700 feet of school grounds, hospital, or sanatorium

Ordinance exists –

Discharge or carrying a weapon Hunting within a park Throwing or shooting missiles, arrows, spears, etc.

Parcel is subjected to a non-sponsor ordinance

Parcel is adjacent to a parcel where the NBOA's to be prohibited already exists.

Parcel is adjacent to a public waterway.

Visitor's expectations of safety at the site, which includes user conflicts that may create public safety issues and impact one or more NBOA's activities. Describe: Given the urban nature of the property it is likely that user conflict would result if hunting permitted, due to the proximity to other residential dwellings, pedestrian and vehicular traffic.

Other _____

Prohibition or Restriction Necessary to Protect Public Safety: Yes No

TRAPPING		
Location	Prohibition/Restriction	List Dates/Seasons (opening and closing)
Upland	None	Open all
Water	None	Open all

Public Safety Team Narrative:

At this time, the Village of Black Earth has no ordinances restricting the use of legal traps and legal trapping methods.

The parcels to be purchased are small, and together they total 1.27 acres. They are located within the Village limits. The parcels, if acquired, could be developed into a public trail connection and available for activities such as, but not limited to, river access, kayaking, fishing and nature study.

Though several trapping methods would be legal at this site, the property is located within 100 yards of several buildings devoted to human occupancy, which due to State regulations; restricts the setting, placing or operation of any body-gripping type trap greater than 60 square inches or any snare or cable restraint, within 100 yards of any building devoted to human occupancy without the owner's consent.

No Water on Site

Public Safety Factors Considered: Check all that apply.

The sponsor is within its own municipality boundary. (Groundswell intends to transfer prop. to Vil. Black Earth)

Parcel is within 100 yards of building devoted to human occupancy and per s. NR 10.13(1)(b)(12)(c), the following traps are prohibited: conibear body gripping traps (with jaws wider than 60 sq. inches) and cable restraints.

Ordinance exists that prohibits trapping or some type of trapping.

Parcel is subjected to a non-sponsor ordinance

Parcel is adjacent to a parcel where the NBOA's to be prohibited already exists.

Parcel is adjacent to a public waterway.

Visitor's expectations of safety at the site, which includes user conflicts that may create public safety issues and impact one or more NBOA's activities. Describe:

Other _____

Prohibition or Restriction Necessary to Protect Public Safety: Yes No

FISHING		
Method	Prohibition/Restriction	List Dates/Seasons (opening and closing)
Shore	None	Open all
Boat	None	Open all
Public Safety Team Narrative:		
<input type="checkbox"/> No Water on Site <input type="checkbox"/> Public Safety Factors Considered: Check all that apply. <input type="checkbox"/> Ordinance exists – <input type="checkbox"/> _____ <input type="checkbox"/> Parcel is subjected to a non-sponsor ordinance <input type="checkbox"/> Parcel is adjacent to a parcel where the NBOA's to be prohibited already exists. <input checked="" type="checkbox"/> Parcel is adjacent to a public waterway. <input type="checkbox"/> Visitor's expectations of safety at the site, which includes user conflicts that may create public safety issues and impact one or more NBOA's activities. Describe: <input type="checkbox"/> Other _____		
Prohibition or Restriction Necessary to Protect Public Safety: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

HIKING		
Location	Prohibition/Restriction	List Dates (opening and closing)
On-Trail	none	Open all
Off-Trail	none	Open all
Public Safety Team Narrative:		
Public Safety Factors Considered: Check all that apply. <input type="checkbox"/> Parcel is subjected to a non-sponsor ordinance <input type="checkbox"/> Parcel is adjacent to a parcel where the NBOA's to be prohibited already exists. <input checked="" type="checkbox"/> Parcel is adjacent to a public waterway. <input type="checkbox"/> Visitor's expectations of safety at the site, which includes user conflicts that may create public safety issues and impact one or more NBOA's activities. Describe: <input type="checkbox"/> Other _____		
Prohibition or Restriction Necessary to Protect Public Safety: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

CROSS COUNTRY SKIING		
Type of Trail	Prohibition/Restriction	List Dates (opening and closing)
Off-Trail (un-groomed)	None	Open all
On-Trail (un-groomed)	None	Open all
On-Trail (groomed)	None	Open all
Public Safety Team Narrative:		
<p>Public Safety Factors Considered: Check all that apply.</p> <p><input type="checkbox"/> Parcel is subjected to a non-sponsor ordinance</p> <p><input type="checkbox"/> Parcel is adjacent to a parcel where the NBOA's to be prohibited already exists.</p> <p><input checked="" type="checkbox"/> Parcel is adjacent to a public waterway.</p> <p><input type="checkbox"/> Visitor's expectations of safety at the site, which includes user conflicts that may create public safety issues and impact one or more NBOA's activities. Describe:</p> <p><input type="checkbox"/> Other _____</p>		
Prohibition or Restriction Necessary to Protect Public Safety:		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

CORRESPONDENCE/MEMORANDUM

DATE: December 6, 2021

TO: Pam Rood – Stewardship LUG Manager

FROM: Cheryl Housley

SUBJECT: NBOA News Release/Announcement Comment Period Closure and Approval

PROJECT NAME: Groundswell Conservancy – Black Earth Creek public access site

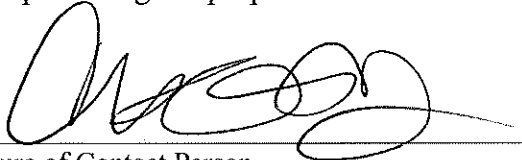
The Groundswell Conservancy – Black Earth Creek public access land acquisition Stewardship grant proposal was required to meet the Bureau's public notice policy (NR 52). The public notice was posted on GovDelivery on November 9, 2021, and the fifteen-day public review period ended on December 2, 2021.

The Department received one (1) comment concerning this proposal which is summarized below:

Summary of comments:

(1) Question on location: parcel location requested, and staff provided description. ...Can you tell me the location of the land purchase for a park in Black Earth? What it is by, road intersection, across from, etc. Just to get an idea of the location. Response from person: Thank you for getting back to me.

In conclusion, the Department has completed the public notice for the above stated Stewardship land acquisition grant proposal.



Signature of Contact Person

12/6/2021

Date

<https://dnr.wisconsin.gov/newsroom/release/51106>



HUNTING FISHING PARKS CLIMATE ENVIRONMENT FORESTRY

NEWSROOM

FOR IMMEDIATE RELEASE: 2021-11-09

Contact: Cheryl Housley, DNR Regional Grant Project Manager
cheryl.housley@wisconsin.gov or 608-516-9560

GROUNDWELL CONSERVANCY, VILLAGE OF BLACK EARTH SEEKS URBAN GREEN SPACE GRANT FOR LAND ACQUISITION

BLACK EARTH, Wis. – The Wisconsin Department of Natural Resources (DNR) today announced that the Groundswell Conservancy has applied for a 50% matching grant from the Urban Green Space subprogram of the [Knowles-Nelson Stewardship Program](#) to assist with the purchase of 1.27 acres of land in the Village of Black Earth in Dane County. Groundswell will provide the matching funds to the grant award.

Groundswell Conservancy will acquire approximately 1.27 acres to create a Village park along Black Earth Creek and eventually develop it into a public access point. The property includes approximately 120 feet of frontage on the west bank of the creek. Recreational activities will include fishing, trapping, hiking, cross-country skiing, picnicking and scenic enjoyment.

The DNR has examined the property's locational factors and is determining that the prohibition of hunting is necessary to protect public safety because of the parcel's proximity to residential dwellings.

The Knowles-Nelson Stewardship Fund was created in 1989 to preserve important natural resources, protect water quality and fisheries and expand opportunities for outdoor recreation for all Wisconsinites to enjoy.

On Stewardship-purchased land, nature-based outdoor activities (hunting, trapping, fishing, hiking or cross-country skiing) cannot be prohibited unless the DNR has determined that prohibiting one or more of those activities is justified to protect public safety.

The DNR's initial assessment of the allowed Nature Based Outdoor Activities is available on the [DNR's Stewardship Public Notice webpage](#). To request a hard copy email: Cheryl.Housley@wisconsin.gov.

The public is encouraged to submit written comments on the proposed acquisition by Dec. 2, 2021 to:

Wisconsin Department of Natural Resources
Fitchburg Service Center
C/O Cheryl Housley, DNR Regional Project Manager
3911 Fish Hatchery Road, Fitchburg, WI 53711
Email: Cheryl.Housley@wisconsin.gov.

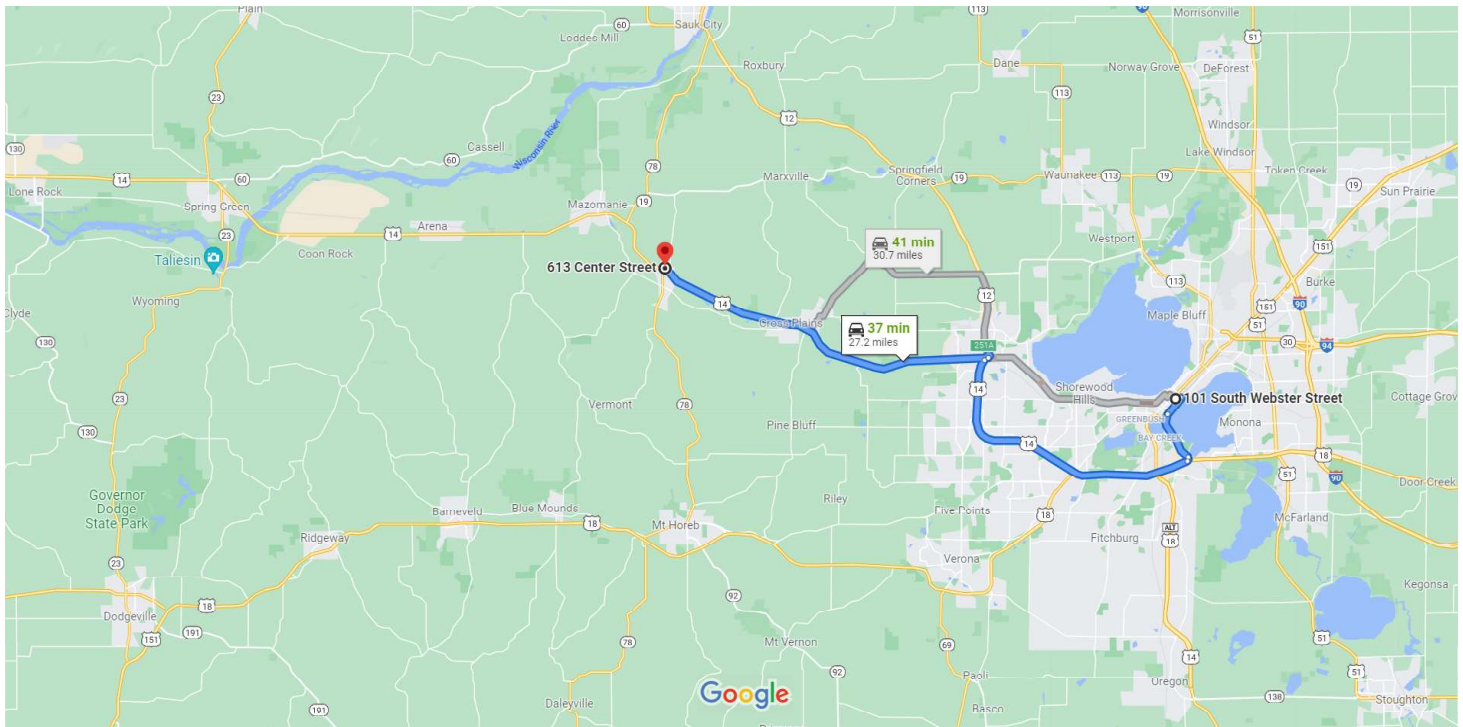
In accordance with s. NR 52.04 (2) (b), Wis. Adm. Code, objections about the hunting activities on this property must show the proposed prohibition to be inconsistent with s. 23.0916 (2) (b), Stats., and s. NR 52.05, Wis. Adm. Code.

For more information on the Knowles-Nelson Stewardship Program, visit the [DNR website](#). To receive updates on Stewardship Grant projects, [please subscribe on the DNR website here](#).



101 S Webster St, Madison, WI 53703 to 613 Center Street, Black Earth, WI

Drive 27.2 miles, 37 min



Map data ©2021 Google 2 mi

101 S Webster St

Madison, WI 53703

Take S Butler St and E Wilson St to John Nolen Dr

- 2 min (0.3 mi)
- ↑ 1. Head northwest on S Webster St toward E Main St
112 ft
- 2. Turn right at the 1st cross street onto E Main St
335 ft
- 3. Turn right at the 1st cross street onto S Butler St
0.1 mi
- ↶ 4. Turn left onto E Wilson St
0.1 mi
- 5. Sharp right onto John Nolen Dr
2 min (0.8 mi)

Get on US-12 W/US-18 W

- 3 min (2.0 mi)
- ↑ 6. Continue straight to stay on John Nolen Dr
1.8 mi
- 7. Keep right at the fork, follow signs for US-12 W/US-18 W and merge onto US-12 W/US-18 W
0.2 mi

Follow US-12 W and US-14 W to Center St in Black Earth

- 28 min (24.0 mi)
- ⬆️ 8. Merge onto US-12 W/US-18 W
Continue to follow US-12 W
10.8 mi
- 9. Take exit 251A toward La Crosse
0.4 mi
- ⬆️ 10. Merge onto US-14 W/University Ave
Continue to follow US-14 W
12.8 mi

- 11. Turn right onto Center St

 Destination will be on the right

53 s (427 ft)

613 Center St

Black Earth, WI 53515

These directions are for planning purposes only. You may find that construction projects, traffic, weather, or other events may cause conditions to differ from the map results, and you should plan your route accordingly. You must obey all signs or notices regarding your route.