

WISCONSIN SMART GROWTH LAW

How It Applies to All State Agencies — Including the DNR

Research Report | May 2026

Overview

Wisconsin's Smart Growth law was enacted in 1999 (1999 Wis. Act 9 and Act 148) and codified primarily at Wis. Stat. § 66.1001. It is widely understood as applying to local governments — cities, villages, towns, counties, and regional planning commissions. However, the law also imposes planning-related duties and goals on all state agencies through a parallel provision, Wis. Stat. § 1.13, titled 'Land Use Planning Activities.' Additionally, the DNR's own administrative code, Chapter NR 44, Wis. Admin. Code, establishes a binding master plan system with mandatory public involvement requirements that apply directly to state park management — including Potawatomi State Park.

Together, these three layers of law — § 66.1001, § 1.13, and NR 44 — create a comprehensive framework under which the DNR cannot simply widen and realign park roads without following a public process and amending its adopted plan.

LAYER 1: Wis. Stat. § 66.1001 — The Core Smart Growth Statute

What It Covers

Section 66.1001 is the primary comprehensive planning statute. It was enacted in 1999 and has been amended several times, most recently by 2015 Wisconsin Act 391. It governs how counties, cities, villages, towns, and regional planning commissions must develop, adopt, and amend comprehensive plans.

The Nine Required Plan Elements

Any comprehensive plan subject to § 66.1001 must contain all nine of the following elements:

- (a) Issues and opportunities element — background, objectives, goals, 20-year forecasts
- (b) Housing element — housing supply, demand, and affordability
- (c) Transportation element — roads, transit, airports, harbors, rail, bike/pedestrian
- (d) Utilities and community facilities element — sewer, water, parks, schools, etc.
- (e) Agricultural, natural, and cultural resources element — farmland, wetlands, wildlife, historic sites
- (f) Economic development element — employment, commerce, industry
- (g) Intergovernmental cooperation element — coordination with adjacent units
- (h) Land use element — current and future land use maps and programs
- (i) Implementation element — programs, sequence, mechanism to measure progress; plan must be updated every 10 years

The Consistency Requirement (§ 66.1001(3))

The most powerful enforcement mechanism in the law is the consistency requirement. As of January 1, 2010:

"Beginning on January 1, 2010, if a local governmental unit enacts or amends any of the following ordinances, the ordinance shall be consistent with that local governmental unit's comprehensive plan."

The ordinances that must be consistent with the plan include: official mapping ordinances, subdivision ordinances, county zoning ordinances, city and village zoning ordinances, shoreland zoning ordinances, and any other ordinance or plan that relates to land use. The statute defines 'consistent with' as: 'furthers or does not contradict the objectives, goals, and policies contained in the comprehensive plan.' (§ 66.1001(1)(am))

Public Participation and Amendment Requirements (§ 66.1001(4))

Section 66.1001(4)(a) requires that any unit of government preparing or amending a comprehensive plan adopt written public participation procedures 'designed to foster public participation, including open discussion, communication programs, information services, and public meetings for which advance notice has been provided, in every stage of the preparation of a comprehensive plan.'

Section 66.1001(4)(b) requires that an adopted plan or amendment be sent to all governmental bodies within the jurisdiction, all adjacent local governmental units, the Wisconsin Department of Administration, the regional planning commission, and the public library serving the area.

Section 66.1001(4)(c) requires that a comprehensive plan be adopted by ordinance by the governing body, following a resolution recommended by the plan commission. The same process applies to amendments.

2015 Wisconsin Act 391 expanded notice requirements: each governmental unit must maintain a list of persons who request notice of plan amendments affecting the allowable use of their property.

Plan Updates

Section 66.1001(2)(i) requires that comprehensive plans be updated no less than once every 10 years. Any update follows the same adoption procedures as the original plan — including public participation and governing body approval.

LAYER 2: Wis. Stat. § 1.13 — State Agency Land Use Planning Obligations

What It Is

Section 1.13, titled 'Land Use Planning Activities,' is the state-agency companion to § 66.1001. It was enacted as part of the same 1999 Smart Growth legislation. It directly addresses what all state agencies — including the DNR — must do in relation to the comprehensive planning framework.

The 14 Planning Goals That Apply to Every State Agency (§ 1.13(2))

Section 1.13(2) states: 'Each state agency, where applicable and consistent with other laws, is encouraged to design its programs, policies, infrastructure and investments of the agency to reflect a balance between the mission of the agency and the following local, comprehensive planning goals:'

- (a) Promotion of the redevelopment of lands with existing infrastructure and the maintenance and rehabilitation of existing structures
- (b) Encouragement of designs that support a range of transportation choices
- (c) Protection of natural areas, including wetlands, wildlife habitats, lakes, woodlands, open spaces and groundwater resources
- (d) Protection of economically productive areas, including farmland and forests
- (e) Encouragement of land uses, densities and regulations that promote efficient development patterns and relatively low governmental costs
- (f) Preservation of agricultural land, open spaces, and natural scenic beauty
- (g) Protection of environmentally sensitive areas
- (h) Provision of adequate infrastructure and public services
- (i) Encouragement of mixing land uses
- (j) Promotion of compact development
- (k) Promotion of housing affordability
- (l) Balancing individual property rights with community interests and goals
- (m) Planning and development of land uses that create or preserve varied and unique communities
- (n) Providing an integrated, efficient and economical transportation system that affords mobility, convenience and safety for all citizens

Application to the DNR Road Widening

Several of these goals apply directly to the Potawatomi road widening project. Goal (a) directs agencies to maintain and rehabilitate existing infrastructure — not expand or upgrade it. Goal (c) requires protection of natural areas including woodlands and open spaces — the escarpment buffer and rare snail habitat qualify directly. Goal (e) calls for efficient development patterns and low governmental costs — widening roads to serve no identified new demand is the opposite. Goal (n) calls for an economical transportation system meeting the needs of all citizens — including those who came for a natural park experience, not a highway.

State Agency Coordination Duty (§ 1.13(3))

Section 1.13(3) states: 'Consistently with other laws, each state agency, whenever it administers a law under which a local governmental unit prepares a plan, is encouraged to design its planning requirements in a manner that makes it practical for local governmental units to incorporate these plans into local comprehensive plans prepared under s. 66.1001.'

This means the DNR, when administering its park planning laws, is required to design those planning processes so they mesh with and support local comprehensive planning — not contradict or override it.

Note on 'Encouraged' vs. 'Required'

The language in § 1.13(2) uses 'encouraged' rather than 'shall.' This is an important nuance. The legislature chose aspirational language for state agencies rather than a hard mandate. However, this does not mean the goals are optional window dressing. Courts look to legislative intent, and these goals were deliberately placed in the same legislative package as the mandatory § 66.1001 provisions. More critically, the DNR has adopted its own binding administrative code — Chapter NR 44 — that converts these goals into mandatory procedural requirements for state park management. See Layer 3, below.

LAYER 3: Wis. Admin. Code Chapter NR 44 — DNR Master Plan Rules (Binding)

What It Is

Chapter NR 44, Wisconsin Administrative Code, is the DNR's own administrative rule governing master plans for all DNR properties, including state parks. Unlike § 1.13, NR 44 uses mandatory 'shall' language throughout. It is legally binding on the DNR and directly governs Potawatomi State Park.

The Master Plan Is the Exclusive Authorization (NR 44.04(9))

NR 44.04(9) is perhaps the most powerful provision for the Potawatomi situation. It states:

"A master plan establishes the authorized management and development on a property, and ONLY those management and development activities identified in the master plan may be pursued by the department."

This is not a guideline. It is a bright-line rule: if it is not in the master plan, the DNR cannot do it. Road widening is not in the Potawatomi master plan. Therefore, under NR 44.04(9), it is not authorized.

Plan Amendments Require Board Approval and Public Process (NR 44.04(3) and (7))

NR 44.04(3) states: 'A plan or plan amendment shall be approved by the [Natural Resources] board, except as provided under sub. (2).' The Natural Resources Board is the citizen governing board of the DNR.

NR 44.04(7) requires a full public involvement process for any master plan development, revision, or amendment, including:

- Published notice of intent to develop, revise, or amend a master plan
- Description of the property, location, and scope of the planning effort
- Identification of affected or interested parties and opportunities to participate
- Maintenance of a notification list of persons requesting updates
- Opportunity for public comment through meetings, hearings, workshops, open houses, surveys, or other methods
- Submission to the board of a summary of public comments and any unresolved conflicts

Minor Amendments vs. Major Amendments (NR 44.04(4))

The DNR might argue that road work constitutes only a 'minor amendment' or 'variance.' However, NR 44.04(4) defines a minor master plan amendment narrowly: it may only be used 'to assign a

management and use prescription and classification to land acquired under a property boundary expansion not exceeding 160 acres, provided the prescription is consistent with the master plan's goal and objectives.' Road widening does not fit this definition — it involves no new land acquisition and directly contradicts existing plan prescriptions.

A plan variance under NR 44.04(4)(a) still requires 'reasonable notification of persons affected by or interested in management of the property... and after appropriate public involvement.' Even the most minor procedural path still requires public notice.

Plan Review Cycle (NR 44.04(12))

NR 44.04(12) requires the DNR to review master plans every 15 years and present recommendations to the Natural Resources Board. The board then determines whether to amend, revise, or extend the plan. A master plan 'shall remain in effect until the board takes action to modify it.' This means the existing Potawatomi plan remains fully binding until the board formally changes it.

Environmental Review Requirement (NR 44.04(8)(f))

When the DNR presents a proposed plan, revision, or amendment to the Natural Resources Board, it must also submit 'any environmental analysis required by s. 1.11, Stats., or ch. NR 150.' Section 1.11 is Wisconsin's environmental policy act — the state equivalent of the federal NEPA. Road widening affecting rare species habitat and the Niagara Escarpment buffer zones would almost certainly require an environmental analysis under this provision.

Summary: Three Layers of Legal Requirements

Wis. Stat. § 66.1001	Counties, cities, villages, towns, regional planning commissions	Comprehensive plans required for land use actions; amendments need public hearing and governing body approval; consistency required for ordinances	Yes — for covered actions
Wis. Stat. § 1.13	All state agencies (including DNR)	Design programs, policies, infrastructure and investments to balance agency mission with 14 comprehensive planning goals; coordinate planning with local units	Encouraged (aspirational but binding in spirit)
Wis. Admin. Code NR 44	DNR — all state park and property management	Only activities in the master plan may be pursued; amendments require Natural Resources Board approval and public involvement; environmental analysis required	YES — mandatory "shall" language

Application to Potawatomi State Park Road Widening

Applying all three layers to the Potawatomi road widening leads to a clear conclusion:

- Under NR 44.04(9), road widening is flatly unauthorized — it is not identified in the master plan, and the master plan is the exclusive authorization document.
- Under NR 44.04(3), any amendment that would authorize road widening must be approved by the Natural Resources Board.
- Under NR 44.04(7), any such amendment requires a public involvement process including notice, comment opportunity, and a summary of public input presented to the board.
- Under NR 44.04(8)(f), the amendment process likely requires an environmental analysis under Wis. Stat. § 1.11 given the rare species habitat and escarpment buffer issues.
- Under Wis. Stat. § 1.13(2), the DNR is obligated to balance its road infrastructure decisions against the Smart Growth goals of protecting natural areas, maintaining existing infrastructure rather than expanding it, and promoting efficient low-cost development patterns.
- Under Wis. Stat. § 66.1001, any local zoning, subdivision, or land use ordinance affected by or responding to the road changes must be consistent with Door County's and the Town of Gibraltar's comprehensive plans.

Conclusion

Wisconsin's Smart Growth framework is not limited to local governments. Through § 1.13, the legislature deliberately extended its comprehensive planning goals to every state agency. Through NR 44, the DNR itself created binding rules requiring that its master plans be the exclusive authorization for all park development activity — and that changes require public process and board approval. The Potawatomi road widening bypasses all three layers of this framework. The public has a legal basis, grounded in state statute and administrative code, to demand that the work stop and the proper planning and public hearing process begin.

Sources: Wis. Stat. § 66.1001 (docs.legis.wisconsin.gov); Wis. Stat. § 1.13 (docs.legis.wisconsin.gov); Wis. Admin. Code Ch. NR 44 (docs.legis.wisconsin.gov); Wisconsin DOA Comprehensive Planning guidance (doa.wi.gov); SEWRPC Comprehensive Planning Summary; UW-Extension Smart Growth Law FAQs.