



NR 1.32, 1.90, 1.91

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Anthony S. Earl
Secretary

BOX 7921
MADISON, WISCONSIN 53707

IN REPLY REFER TO: _____

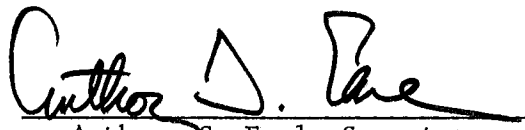
STATE OF WISCONSIN)
)
DEPARTMENT OF NATURAL RESOURCES) ss

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TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Anthony S. Earl, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. X-30-77 was duly approved and adopted by this Department on June 16, 1977. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at Pyare Square Building in the Village of Shorewood Hills, this 26th day of August, 1977.


Anthony S. Earl, Secretary

(SEAL)

STATE OF WISCONSIN NATURAL RESOURCES BOARD

.....
IN THE MATTER of renumbering section NR 1.32 .
and creating sections NR 1.90 and NR 1.91 of .
the Wisconsin Administrative Code pertaining .
to public access to lakes and streams .
.....

X-30-77

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD

RENUMBERING AND CREATING RULES

Pursuant to the authority vested in the State of Wisconsin Natural Resources Board by sections 33.06, 80.41 and 227.014, Wisconsin Statutes, the State of Wisconsin Natural Resources Board hereby renumbers and creates rules as follows:

SECTION 1 - Section NR 1.32 is renumbered to be NR 1.92.

SECTION 2 - Section NR 1.90 is created to read:

NR 1.90 Adequacy of access. (1) Purpose. It is the purpose of this section and sections NR 1.91 and NR 1.92 to provide guidelines for access adequacy or abandonment decisions by the department. The public interest in the waters of this state and access to them shall be protected to the fullest extent authorized by the law. Abandonment of public access to a body of water shall not be approved if such abandonment would result in injury to the public rights as determined by the use of standards provided herein and in sections NR 1.91 and NR 1.92. The burden of demonstrating that abandonment will not injure the rights and interests of the public in a body of water shall be on the party requesting the approval of the abandonment. The availability of a body of water for public use may be used by the department as a factor in the development of priorities for the following so that the public is afforded the opportunity to utilize or receive benefit from:

- (a) The awarding of development grants;
- (b) The development of facilities adjacent to a body of water; or

(c) The delivery of management services designed to provide quality uses of a body of water.

(2) Definitions. (a) "Adequate access" exists when the general public has been provided with entry to a body of water to enjoy quality uses at a reasonable fee, if one is charged, considering the character and uses of the water. The following criteria must also be met:

1. The public should be able to park within a reasonable walking distance of the body of water, given the character and use of the access, but in no case more than $\frac{1}{4}$ of a mile from the water. This paragraph is not applicable if the body of water or land surrounding it either has been designated as wild or wilderness by the department or is being managed as wild or wilderness in a manner and for a purpose acceptable to the department.

2. For a body of water having uses involving boating, adequate car-trailer unit parking must be provided to ensure that the existing or potential users are given an opportunity to park their vehicles within $\frac{1}{4}$ of a mile from the water.

3. The state of Wisconsin or one town, county, village, city or public inland lake protection and rehabilitation district in which the body of water is located shall have an interest in an access to the body of water by deed, easement or lease. In lieu thereof, the secretary of the department may decide that an acceptable alternative exists if there is sufficient privately owned access that is open to use by the general public.

(b) "Body of water" includes all waters of the state as used in section 147.015(13), Wis. Stats.

(c) "Quality use" means an activity that can be enjoyed, given the character of the body of water, without damage to the resource or endangering the public health, safety or welfare.

(d) "Reasonable fee" means a fee that is consistent with, and acceptable under, section NR 1.92(6)(F).

(3) In determining eligibility for a development grant or management services for a project on a body of water, the department shall make findings regarding the following:

(a) The amount and character of the existing public and private access, and the fees charged for the use of such access;

(b) The present uses of the body of water;

(c) Additional quality uses that could be made of the body of water, given its existing character; but which are presently restricted by the character of the existing access;

(d) If the character or quality of the body of water will be changed by the proposed action, the additional quality uses that could be made of the water and the additional access necessary to accommodate such uses; and

(e) Regulatory activities and management services that have recently occurred or are contemplated to occur on the body of water other than the ones presently proposed.

(4) A project on a body of water shall be eligible for management services or a development grant if:

(a) The existing access provides the public with an adequate opportunity to engage in any existing or potential quality use of the body of water, and the fee charged, if any, for the use of the access is reasonable; or

(b) There is a need to provide the public with a higher quality or higher quantity of use of the body of water, and a written commitment has been made to provide adequate access so that the public will benefit from the development grant or management services.

SECTION 3 - Section NR 1.91 is created to read:

NR 1.91 Access abandonment. (1) Notice and hearing. (a) The department of natural resources, upon receiving a petition for the abandonment of a public access to a navigable lake or stream, will publish a notice of the proposed abandonment pursuant to the procedures in section 31.06, Wis. Stats. If no hearing is requested, the department shall proceed under (3) to grant or deny the petition.

(b) If a hearing is requested, the department shall hold the hearing as a class 1 contested case in the county in which the access is proposed to be abandoned. At the close of the hearing, the department shall make its decision based on the standards in (3).

(2) "Adequate access" is defined in section NR 1.90(2)(a).

(3) The department shall grant the petition to abandon the public access if it finds one of the following:

(a) There is alternate adequate access available to meet the existing uses of the body of water and such other uses as may be reasonably anticipated; or

(b) Conditions of approval ordered by the department such as, but not limited to, a showing of financial capability of an applicant for approval of abandonment to maintain a comparable or superior replacement public access site, existence of a comparable or superior replacement public access site provided by the applicant or other conditions related to assurance of protection of the interest of the public in the body of water have been fully complied with by the applicant; or

(c) Environmental degradation is occurring as a result of existing usage of the body of water, and abandonment of the access will reduce or eliminate such degradation so as to outweigh the public rights and interest in access to that body of water.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on June 16, 1977.

The rules contained herein shall take effect upon publication.

Dated at Madison, Wisconsin 26TH August 1977

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By Anthony S. Earl
Anthony S. Earl, Secretary

(SEAL)