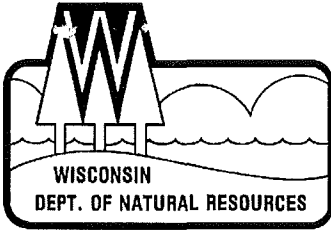


CR 92-150



George E. Meyer  
Secretary

**State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES**

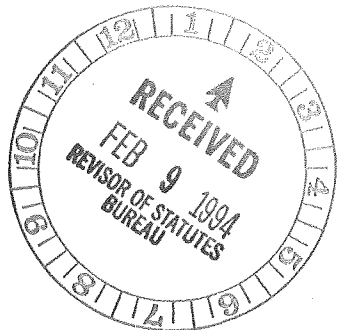
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STATE OF WISCONSIN )  
 )  
DEPARTMENT OF NATURAL RESOURCES )      ss

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, 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. AD-31-92 was duly approved and adopted by this Department on June 24, 1993 and December 9, 1993. 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 the Natural Resources Building in the City of Madison, this 3rd day of February, 1994.



George E. Meyer  
George E. Meyer, Secretary

(SEAL)

4-1-94

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
REPEALING AND RECREATING RULES

IN THE MATTER of repealing and recreating ss. NR 1.90 to 1.93 of the Wisconsin Administrative Code pertaining to a public access policy for waterways, implementation of boating access provisions, abandonment of access, and review of access in plats AD-31-92

Analysis Prepared by Department of Natural Resources

Authorizing statutes: ss. 23.09(2) (intro.), 30.12(3)(b) and 227.11(2)(a), Stats.

Statutes interpreted: ss. 23.09(1) & (2)(m), 30.77, and 80.41, Stats.

The order:

1. Repeals existing sections of the administrative code pertaining to adequacy of access, access abandonment, providing vehicular access to lakes and streams, and fees for vehicular access.

2. Establishes a public access policy for waterways which provides reasonable access to the state's navigable waters for public rights of navigation, related incidental uses and other activities which are enhanced by location near waterways.

3. Establishes standards for public boating access and acceptable fees for public boating access.

4. Establishes provisions for access abandonment pursuant to s. 80.41, Stats.

5. Establishes limitations to the waiver of access requirements in plats established pursuant to s. 236.16(3), Stats.

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SECTION 1. NR 1.90 to 1.93 are repealed and recreated to read:

**NR 1.90 PUBLIC ACCESS POLICY FOR WATERWAYS.** (1) It is the goal of the state of Wisconsin to provide, maintain and improve access to the state's navigable lakes, rivers and streams for the public. Public access facilities shall allow for public rights of navigation, related incidental uses and other uses which are appropriate for the waterway. Waterway uses shall be equally available to all waterway users and include enjoyment of natural scenic beauty and serenity. These public rights and uses may be provided by any combination of publicly and privately owned access facilities which are available to the general public free or for a reasonable fee. The department, alone or in cooperation with local government, shall exercise its management and regulatory responsibilities to achieve this goal and to assure

that levels and types of use of navigable waters are consistent with protection of public health, safety and welfare, including protection of natural resources.

(2) The department shall:

(a) Acquire, develop, maintain and improve navigation access which meets policy objectives;

(b) Provide public access to lands adjacent to state waters for uses that are not directly related to navigation but which require or are enhanced by proximity to water;

(c) Work with local units of government, other state and federal agencies and citizens to acquire, develop, maintain and improve public access;

(d) Work with private access providers to acquire, develop, maintain and improve access available to the public;

(e) Develop standards for public access acquisition, development, maintenance and improvement that provide recreational opportunities consistent with demand, commensurate with the capacity of the resource to support recreation and that provide a broad range of recreational experiences;

(f) Provide funding and services that enhance natural resource values of a waterway only if reasonable public boating access has been provided;

(g) Enhance development of non-boating public access throughout the state to accommodate a significant population of disabled, elderly and others who elect not to use watercraft to enjoy and use the state's waterways;

(h) Increase public awareness of water user responsibilities, public safety and measures to protect the natural resource values of our lakes, rivers and streams; and

(i) Work with local units of government and citizens to help reduce use conflicts and trespass problems.

**NR 1.91 PUBLIC BOATING ACCESS STANDARDS. (1) APPLICABILITY.** Sections NR 1.91 to 1.93 shall apply to department decisions related to acquiring, developing, maintaining and improving public boating access sites, providing natural resources enhancement services and to other department decisions relating to protection and use of navigable waters. Sections NR 1.91 to 1.93 do not allow trespass across private lands, change existing trespass law nor change navigation laws. Sections NR 1.91 to 1.93 would not apply to waterways which are not public navigable waters such as most artificial manmade ponds. The rights of riparian owners for singular access to adjacent waterways would also be unaffected.

(2) DEFINITIONS. As used in ss. NR 1.90 to 1.93, the following definitions apply:

(a) "Abandon", "abandonment", "discontinuance" means a permanent or long-term closure of an access site whether by resolution, ordinance, signing, placement of a physical barrier or by other means that reduces access.

(b) "Access site" means an area of land providing public boat access or carry-in access, which provides parking for vehicles with or without trailers.

(c) "Carry-in access" means access designed only for non-trailer boat launching.

(d) "Natural resource enhancement services" means funding or activities that increase the recreational or environmental values of a waterway. These services include but are not limited to fish stocking, removal or other fish population management, habitat development, financial assistance for aquatic plant harvesting and lake restoration grants.

(e) "Open water acres" means the water body surface which appears as water predominantly devoid of emergent vegetation on recent aerial photographs representative of the navigation season. This determination shall be made by the department and shall include open water acres on all contiguous waters connected by a channel or river commonly navigated by motorized craft.

(f) "Plan" means an alternative boating access and waterway protection plan developed by the department or a local unit of government pursuant to sub. (6).

(g) "Public access", for purposes of s. NR 1.92, means any site providing motor vehicle access to ice-bound waters, public boating access or carry-in access.

(h) "Public boating access" means any site or combination of sites including private sites meeting the provisions of sub. (7) at which the general public may gain legal access to a body of water by the process of launching a boat.

(i) "Reasonable public boating access" means opportunities for public enjoyment and use of navigable waters which:

1. Allow public rights of navigation and related incidental uses of the water which are equal for all,

2. Comply with the standards for boating access established in this policy,

3. Are available free or at a reasonable fee as determined by standards established in this policy, and

4. Assure that levels and types of waterway use by all users do not interfere with public health, safety and welfare.

(j) "Reduced" means lowering the number of parking units available for public use.

(k) "Resident" means a natural person who permanently resides or owns real property within the unit of government maintaining or operating the access site.

(l) "Resource protection services" include but are not limited to nonpoint pollution control grants, loans for municipal sewage treatment facilities, acquisition grants under the urban green space program, lake planning grants, lake protection grants and funding for municipal boating safety patrols and aids to navigation.

(m) "Season pass" means authorization to use boat access facilities provided by the issuing authority when use of the facilities are available from January 1 to December 31 of each year.

(n) "Services level" means that level of public boating access which meets or exceeds the levels described in sub. (4).

(3) PRIORITIES. When acquiring and developing public boating access sites, the following shall have priority, in no prescribed order of importance:

(a) Sites on waters without boating access.

(b) Sites on lakes of over 500 open water acres that fail to meet the services level specified in sub. (4).

(c) Sites, statewide, on waters having the greatest boating demands.

(d) Sites which will provide public boating access to rivers and carry-in access to streams failing to meet the services level specified in sub. (4).

(4) MINIMUM PUBLIC BOATING ACCESS TO QUALIFY WATERS FOR RESOURCE ENHANCEMENT SERVICES. (a) The department may only provide natural resource enhancement services for a body of water when it determines that the general public has been provided with reasonable public boating access. The department may not provide natural resource enhancement services on waters where public access has been abandoned or reduced without prior approval by the department.

(b) The department may continue to provide enhancement services to waters that do not meet minimum public boating access development standards where the department determines that existing access facilities are sufficient to meet existing public demand for access.

(c) The department may provide resource protection services for pollution abatement or prevention, natural resources

protection, public safety or public boating access if public boating access is not available on a waterway.

(d) A waterway has reasonable public boating access and is eligible for natural resource enhancement services when public boating access meets the following standards:

1. Inland Lakes	Minimum Public Boating Access Development
(Open water acres)	
Less than 50 acres	One carry-in access site for 5 vehicles
50 to 99 acres	One or more access sites which in total provide a combination of 5 vehicle and car-trailer units
100 to 499 acres	One or more access sites which in total provide 1 car-trailer unit per 30 open water acres but no less than 5 units for lakes of 50 to 150 open water acres
500 to 999 acres	One or more access sites which in total provide 1 car-trailer unit per 35 open water acres but no less than 17 units for lakes of 500 to 595 open water acres
1000 to 4,999 acres	One or more access sites which in total provide 1 car-trailer unit per 50 open water acres but no less than 29 units for lakes with 1000 to 1450 open water acres
5,000 or more acres	One or more access sites which in total provide 1 car-trailer unit per 70 open water acres but no less than 100 units for lakes of 5000 to 7000 open water acres
Rivers and Great Lakes	
Rivers and Lakes Michigan and Superior and their bays	One access site within 5 miles of each incorporated community bordering the shore
Rivers and streams accessed primarily by carry-in	One access site per 10 miles of stream thread
Exceptions	Determined case-by-case based

on a plan.

2. In addition to these standards, additional parking for handicapped individuals meeting the federal and state standards shall also be met. Lakes greater than 50 open water acres in size shall be provided with facilities capable of launching a trailered boat unless exempted by an approved plan.

3. Parking shall be contiguous with the launch site unless the department determines that resource protection, spatial restrictions or other factors require a greater distance. At each site parking for persons with disabilities may be provided at a location different from that for the general public if necessary to comply with federal accessibility standards.

4. Public boating access shall be available free or at a fee meeting the requirements of sub. (11).

5. Public boating access support facilities such as toilets, waste containers, lights, etc., shall be provided where necessary for public safety, or to protect resources or resolve conflicts with affected property owners.

6. Public boating access shall, at a minimum, be open during normal operating hours for outdoor public recreational facilities in the vicinity and year-round unless public safety requires closure. An exception may be made when public boating access is provided through agreement with a private provider. Any boat launched during operating hours may not be denied egress from the water at any time through the public boating access. Any designated parking unit when found unoccupied shall be considered available for use regardless of prior occupancy, except those designated for handicap use.

7. Public boating access shall provide for use which is consistent with protection of navigable water and generally enjoyed by all users.

(5) MAXIMUM PUBLIC BOATING ACCESS. (a) Local units of government or the department may pursue more public boating access to waters than is required in sub. (4). The department may pursue public boating access to achieve the maximums in par. (b) unless local governments or the department adopt and implement a plan.

(b) The department has determined that granting permits for boating access on bodies of water where the maximum access standards are exceeded will materially impair navigation and is detrimental to the public interest. The department may not pursue public boating access development nor may it approve permits or provide financial assistance for public boating access beyond the levels described in this subsection unless greater levels are established in a plan.

Inland Lakes (Open water acres)	Maximum Public Boating Access
Less than 50 acres	One carry-in access site for 5 vehicles
50 to 99 acres	One or more access sites which in total provide 5 car-trailer units
100 to 499 acres	One or more access sites which in total provide 1 car-trailer unit per 15 open water acres
500 to 999 acres	One or more access sites which in total provide 1 car-trailer unit per 25 open water acres but no less than 33 units for lakes of 500 to 825 open water acres
1,000 to 4,999 acres	One or more access sites which in total provide 1 car-trailer unit per 30 open water acres but no less than 40 units for lakes of 1,000 to 1,200 open water acres
5,000 or more acres	One or more access sites which in total provide 1 car-trailer unit per 50 open water acres but no less than 167 units for lakes of 5,000 to 8,350 open water acres
 Rivers and Great Lakes	
Rivers and Lakes Michigan and Superior and their bays	One access site per 5 miles of flowing water or where the department determines additional facilities would exceed resource capacity of that part of the waterbody.
 Rivers and Streams	
Rivers and streams accessed primarily by carry-in	One carry-in site per 10 miles of flowing water
Exceptions	Determined by a plan

(c) Access site development shall meet the criteria in subs. (4) to 7.



(6) ALTERNATIVE PUBLIC BOATING ACCESS AND WATERWAY PROTECTION PLANS. (a) Natural resource enhancement services may be provided for waters that have less public boating access than that in sub. (4)(d)1., and public boating access may be developed that exceeds levels in sub. (5)(b) only if local governments or the department implement a plan. Plans developed by local governments require written approval by the department prior to adoption.

(b) Plans shall identify and assess the effects of waterway use on natural resources, describe mechanisms to protect public safety and natural resources, and identify public boating access that meets the objectives of s. NR 1.90. Plans may apply to individual waters or groups of similar waters. Plans shall consider environmental as well as social and developmental factors which may include:

1. Environmental sensitivity criteria:

- a. Lake size and irregularity.
- b. Lake depth and contour.
- c. Sensitive areas for fish, wildlife and aquatic plants.
- d. Nature and composition of fish, wildlife and presence of threatened or endangered resources.
- e. Lake bottom sediment types.
- f. Natural shoreline features.
- g. Sensitivity to exotic species.
- h. Water quality.
- i. River or stream characteristics.

2. Social and developmental criteria:

- a. Shoreline beauty.
- b. Shoreland zoning.
- c. Land use and land cover.
- d. Traditional, existing and potential water uses.
- e. Ability of the municipality to regulate land use and development.
- f. Ability of the municipality to enforce public safety regulations.
- g. Water use regulations proposed or in effect.
- h. Proximity to other waters.

- i. Proximity to population centers.
  - j. Demand for recreational opportunities.
  - k. Impact on public safety.
  - l. Presence of culturally or historically significant features.
  - m. Trespass problems associated with increased access on rivers and streams.
3. Appropriate levels and types of public access based on a consideration of the issues in subds. 1 and 2.
4. Ability of the municipality to effectively implement the plan.

(c) The department shall approve proposed plans and implementing ordinances if it determines that the plans and implementing ordinances are consistent with protection of public health, safety and welfare, the objectives of s. NR 1.90 and include an accurate analysis of the issues in par. (b). Department decisions related to plan approval may be appealed under ch. 227, Stats. The department shall withhold enhancement services until an approved plan is fully implemented. Public boating access site development shall comply with any approved plan. The department may not approve grants and permits if the decision would conflict with an approved plan.

(d) The sponsor of an approved plan shall publish a summary of the plan as a class I legal notice.

(e) The department may waive the minimum reasonable access standards or the need for an alternative plan where it finds that this would not serve to protect the public rights and interest in the waterway.

(7) PRIVATE PROVIDERS. Privately owned public boating access shall be included in any determination of access availability for purposes of compliance with ss. NR 1.91 to 1.93 and provision of resource enhancement services if:

(a) It is provided free or for a reasonable fee, as defined in sub. (11),

(b) The owner furnishes an irrevocable contract with the state, agreeing to provide specified public boating access facilities for not less than 5 years, and

(c) Facilities meet the public boating access site development standards under sub. (8).

(8) PUBLIC BOATING ACCESS SITE DEVELOPMENT STANDARDS. In addition to other state and federal requirements, including but not limited to the uniform federal accessibility standards (UFAS)

published by the architectural and transportation barriers compliance board (ATBCB), the Americans with disabilities act (P.L. 101-336) accessibility guidelines (ADAAG) and the state of Wisconsin building codes (chs. ILHR 50-64), the following standards shall apply to acquisition, development and maintenance of boating access sites for the purpose of determining compliance with ss. NR 1.90 to 1.93:

(a) Natural shoreline beauty shall be protected by preserving or creating adequate vegetative screening for facilities and parking.

(b) The sum of all public boating access sites on a water body shall accommodate multiple types of use appropriate for the waterway. Individual access sites shall be designed to minimize conflicts between uses at the site and on the water body.

(c) The site and support facilities shall be designed and located so as to avoid damage to critical habitat and other environmentally sensitive areas.

(d) Each site shall be designed to provide barrier-free public boating access for persons with disabilities.

(e) Each site shall be clearly marked at public roadways. Fees and hours of operation shall be clearly posted.

(9) FINANCIAL ASSISTANCE PROGRAMS. Providing public boating access is a partnership program between state and local units of government. The department may only provide financial assistance for projects which comply with ss. NR 1.90 to 1.93 and other applicable state and federal requirements. The department shall assist municipalities in applying for state financial assistance for renovation, operation or maintenance expenses if the maximum allowable launch fees do not provide enough revenue to pay for these access site expenses.

(10) MAINTENANCE AGREEMENTS. When in the best interests of the state, the department may engage the services of others, by written agreement, with or without compensation, for maintenance of state-owned or funded public boating access sites.

(11) BOAT LAUNCHING FEES. The department encourages free boat launching. A reasonable launch fee may be charged under authority of s. 30.77, Stats., for the purpose of operating and maintaining a boat access site owned or operated by municipalities, lake management districts and other access providers meeting the provisions of sub. (7). Charging excessive, unjustified or unreasonable boat launching fees restricts or prohibits public boating access and use of navigable waters in the state. A reasonable launch fee for the purposes of s. 30.77, Stats., is one that does not exceed the maximum allowable amount under the following criteria:

(a) Base fee. A base is that fee that is charged a state resident vehicle for entrance to the state parks.

(b) Public boating access surcharges. Municipalities, lake management districts and other public boating access providers that maintain any of the following services may add to the base fee not more than the following surcharges for vehicles with trailers. No more than the base fee may be charged for non-motorized or non-trailerred boats.

- |  |            |
|--|------------|
| 1. Attendant when on duty                              | .20 X Base |
| 2. On-site toilet facilities                           | .20 X Base |
| 3. Great Lakes sites                                   | .30 X Base |
| 4. Boats 20 ft. in length or more but less than 26 ft. | .30 X Base |
| 5. Boats 26 ft. or greater in length                   | .60 X Base |

(c) Daily launch fee. The total of base fee and all applicable surcharges, rounded to the nearest quarter of a dollar, shall constitute the daily launch fee. A daily launch fee that is paid shall be valid for all boat access facilities provided by the issuing authority for that day. If different fees are charged by the issuing authority for different access sites, the higher fee shall be allowed for use of all the sites.

(d) Season pass. If a launch fee is charged, a season pass at a fee not to exceed 10 times the daily launch fee shall be provided for both residents and non-residents. A mechanism to obtain a season pass shall be provided by the public access provider at the launch site.

(e) Prior approval required. Each public boating access provider charging a launch fee in excess of the resident state park daily entrance fee shall provide its fee schedule to the department for approval prior to its adoption. The fee schedule shall be submitted on department forms available from department's central office. Department approval shall be based solely on demonstration that the provider maintains the facilities or services described in par. (b) that justify charges in excess of the resident state park daily entrance fee and that a season pass is available.

Note: The department's mailing address is: Department of Natural Resources, P.O. Box 7921, Madison, WI 53707.

(f) Existing approved fee structures. Reasonable fees under pars. (a) to (e), do not apply to access sites which the department has determined in a written decision to have a reasonable fee prior to the effective date of this rule.

(g) Differential fee based on residency. Local units of government, including lake management districts, which maintain and operate public boating access sites, may charge differential fees on the basis of residency within the unit of government maintaining or operating the access. If a fee is charged, the

fees for a nonresident may not exceed 150% of the fee charged a resident and nonresident fees may not exceed the maximum allowable amounts except when, par. (b)4 or 5 are applicable.

Note: For example, with a daily resident entrance fee of \$4.00 for state parks, at an access site on an inland lake with an attendant on duty and toilet facilities, a launch fee for an 18 foot boat may be as high as \$5.50 ( $4 + 0.2(4) + 0.2(4)$ , rounded to nearest 0.25) for both residents and non-residents, and for a 26 foot boat as high as \$8.00 ( $4 + 0.2(4) + 0.2(4) + 0.6(4)$ , rounded to nearest 0.25) for residents and \$12.00 ( $8 \times 1.5$ , rounded to nearest 0.25) for non-residents.

**NR 1.92 ABANDONMENT OF ACCESS.** (1) NOTICE OF INTENT TO ABANDON AN ACCESS. (a) Any municipality subject to s. 80.41, Stats., which proposes to abandon or discontinue any highway, street, alley or right of way, which provides public access to a navigable waterway, shall provide a copy of the resolution or ordinance and notify the department at least 10 working days prior to acting on a resolution or ordinance to abandon or discontinue. Within 10 working days of enacting an ordinance or resolution subject to approval under s. 80.41, Stats., the municipality shall submit a copy of the ordinance or resolution to the department. Upon receipt of the ordinance or resolution, the department shall publish a notice of the proposed abandonment pursuant to the procedures in s. 31.06, Stats. If no hearing is requested, the department shall proceed under sub. (2) 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 public access is proposed to be abandoned. The department shall make its decision based on the standards in sub. (2).

(2) FINDINGS FOR GRANTING. The department may grant the petition to abandon or discontinue the public access only if:

(a) Any access sites or part thereof proposed to be abandoned or discontinued is replaced prior to granting the petition; or

(b) The department finds that the access proposed to be abandoned does not contribute to the quality or quantity of public access on the body of water.

(3) APPROVAL CONDITIONS. The department may order conditions of approval including, but not limited to, a showing of financial capability of the petitioner to provide and maintain an equivalent or superior replacement public access site, and other conditions related to assurance of protection of the interest of the public in the body of water.

(4) ENVIRONMENTAL DEGRADATION. Access sites may also be abandoned where environmental degradation is occurring at the site as a result of existing use, and abandonment of the access will reduce or eliminate the degradation without reducing public interests in access to that body of water.

NR 1.93 ACCESS IN PLATTED SUBDIVISIONS. Under s. 236.16(3), Stats., the department has authority to recommend wider access at less frequent intervals than are prescribed in the statutes. The department shall consider waiver of the 60-foot access requirement only where the department determines:

(1) It will be advantageous to public interests in navigable water;

(2) Adequate space for access users and adequate buffering for private property is assured by access wider than 60 feet where possible; and

(3) The access that would result provides an equal or greater opportunity for public access than would be provided by dedication at statutorily prescribed intervals and the 60-foot width.

The foregoing rules were approved and adopted by the State of Wisconsin Natural Resources Board on June 24, 1993 and December 9, 1993.

The rules herein 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.

Dated at Madison, Wisconsin 2/3/94

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

By George E. Meyer  
George E. Meyer Secretary

(SEAL)  
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