

**2013 DRAFTING REQUEST**

**Bill**

Received: 9/15/2013 Received By: mglass  
Wanted: As time permits Same as LRB:  
For: Garey Bies (608) 266-5350 By/Representing: Cory Bruce  
May Contact: Drafter: mglass  
Subject: Nat. Res. - wet/shore/flood Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Rep.Bies@legis.wisconsin.gov  
Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Exemption for certain wetlands

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mglass 9/26/2013			_____			
/1		evinz 9/27/2013	jfrantze 9/27/2013	_____	mbarman 9/27/2013	mbarman 11/14/2013	

FE Sent For:

↳ Not  
Needed

<END>

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1/?	mglass	1, eev 9/27/13	1, eev 9/27/13	2/m 9/27			

FE Sent For:

<END>

**Gibson-Glass, Mary**

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**From:** Bruce, Cory  
**Sent:** Friday, September 13, 2013 12:22 PM  
**To:** Gibson-Glass, Mary  
**Subject:** FW: Bill drafted for your office contain a wetland exemption

Mary,  
We tried to work out some issues with the DNR, but were unsuccessful. We believe we'll need to move ahead having a bill drafted. Would it be easier for us to get together so you can review the file and determine what you'd need to draft the bill? I'll also forward to you the most recent response we received from DNR on this case and why our constituent would have been denied under current law as well.

Thanks,  
Cory

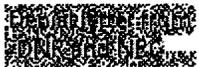
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**From:** Bruce, Cory  
**Sent:** Tuesday, July 02, 2013 3:32 PM  
**To:** Gibson-Glass, Mary  
**Subject:** RE: Bill drafted for your office contain a wetland exemption

Mary,  
Thanks for talking with me the other day about non-statutory provisions and the possibility of doing something for our constituent. Attached is the letter of denial from DNR for the permit and a letter from Natural Resources Consulting giving additional background on the issue and more description of the lot.

Once you've had a chance to review this, let me know what you think might be possible moving forward.

Thanks,  
Cory Bruce  
Bies Office



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**From:** Gibson-Glass, Mary  
**Sent:** Thursday, June 27, 2013 10:20 AM  
**To:** Bruce, Cory  
**Subject:** Bill drafted for your office contain a wetland exemption

Mary Gibson-Glass  
Senior Legislative Attorney  
Legislative Reference Bureau  
608 267 3215

<< File: 05-4528/2 >>

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS

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IN RE THE MATTER OF:

The Denial of the Fill Permit for the Project  
Located in NE ¼ of the NE ¼ of Section 17  
Township 27 North, Range 26 East, on the  
Northwest corner of Ridgeway Dr. and E.  
Circle Ridge Place, City of Sturgeon Bay,  
Door County

CASE NO:  
IP-NE-2007-15-0387LB  
Corps #2007-2298-JHS

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PETITION FOR CONTESTED CASE HEARING

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TO: Secretary of the Department of Natural Resources  
P.O.Box 7921  
Madison, WI 53707-7921

NOW COMES Clifford Tebon, Petitioner, by and through his attorney, Alan E. Grischke of Grischke Law, LLSC, who requests a Contested Case Hearing pursuant to sec. 227.42 Wis. Stats. with regard the decision of the State Department of Natural Resources dated 07/09/2009 and signed by Carrie Webb, Water Management Specialist, on behalf of the Wisconsin Department of Natural Resources. (Exhibit "A") In support of his request for a hearing, the Petitioner states as follows:

1. The substantial interest injured or threatened with injury by the agency action is the irreparable harm to the Petitioner caused by his inability to tastefully and to the benefit of all neighbors, develop his property, as has been allowed by the agency, to his neighboring property. In addition, to his serious detriment, the Petitioner will suffer irreparable damage to his property value.
2. There is no evidence of legislative intent that the interest of the Petitioner not be protected, as on information and belief, all other landowners in the vicinity, including a condominium project with garages, have been filled without any action being taken by the agency.

The adjoining landowner was given a permit to fill property which constituted more definable

wetlands than the Petitioners. The denial of the certification to the Petitioner is arbitrary and capricious and against public policy.

3. The Petitioner's injury, as previously stated, is in the loss of property value, ability to improve on the esthetics of the property and the loss of the quiet enjoyment of the property through its development on a par with the surrounding neighborhood.

4. There is a material dispute of fact with regard to the standards utilized to issue a fill permit to the adjoining landowner and the selective, arbitrary and capricious application of statutory interpretation to all other landowners in the division as it has been applied to filling property before building.

5. The Petitioner is appealing the decision pursuant to sec. 227.42 Wis. Stats.

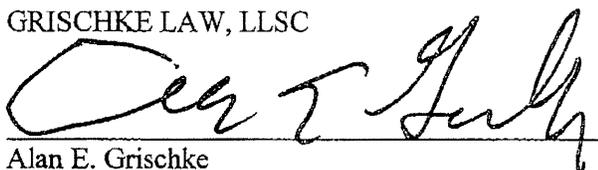
6. The agency denial of the Petitioner's application arbitrarily and capriciously enforces certain sections NR 299.04(1)(b) to the detriment to the Petitioner. Such selective enforcement of the Administrative Code cannot be condoned.

7. The Petitioner and witnesses will appear and present information supporting their objections in a contested case hearing.

Dated this 29<sup>th</sup> day of July, 2009.

GRISCHKE LAW, LLSC

By:



Alan E. Grischke  
State Bar No. 1009999  
Attorney for Petitioner  
P.O.Box 847  
Wausau, WI 54402



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
 Matthew J. Frank, Secretary  
 Ronald W. Kazmierczak, Regional Director

Northeast Region Headquarters  
 2984 Shawano Ave.,  
 Green Bay, Wisconsin 54313  
 Telephone 920-662-5100  
 FAX 920-662-5413  
 TTY Access via relay - 711

July 9, 2009

IP-NE-2007-15-0387LB  
 Corps #2007-2298-JHS

Clifford Tebon  
 63 E. Oak Street  
 Sturgeon Bay, WI 54235

Dear Mr. Tebon:

The Department of Natural Resources has evaluated your application for water quality certification pursuant to Section 401 of the Federal Clean Water Act and Chapter NR 299, Wisconsin Administrative Code.

The project is located in the NE1/4 of the NW1/4 of Section 17, Township 27 North, Range 26 East, on the northwest corner of Ridgeway Dr. and E. Circle Ridge Place, City of Sturgeon Bay, Door County.

We have determined that there is not reasonable assurance that your proposal to fill 6879 square feet of wetlands for a single family residence will comply with the standards enumerated in section NR 299.04, Wis. Admin. Code, and certification is **denied**.

Specifically the Department finds that:

1. The project would affect 0.158 acres of forested wetlands for the purpose of constructing a single family residence;
2. The proposed activity is not wetland dependent, and one or more practicable alternatives exist which will not adversely impact wetlands nor result in other significant adverse environmental consequences. There are vacant upland sites available for residential construction in the area, which will not result in adverse impacts to any wetlands;
3. The wetland provides protection of water quality by slowing runoff from roadways and developed areas, allows sediment to be filtered out before reaching a stream and the bay of Sturgeon Bay, allows nutrients and chemicals to be absorbed and broken down before reaching the bay, provides water storage to prevent flooding and minimize harm to downstream areas, provides floral diversity, and provides habitat for resident and migratory songbirds and other wildlife.
4. A meeting was held to discuss the mapped wetlands in the Purves Lagoon subdivision on April 24, 1995 and was attended by the Department, Army Corps of Engineers, a member of the legislature, Clifford Tebon, and others. According to the meeting notes, Pete Konrad of the Department stated that lots needing a lot fill will probably not get a Water Quality Certification.
5. Ron Weas purchased the property from Clifford Tebon on June 28, 2001 and applied for a Water Quality Certification on June 17, 2003 (3-NE-2003-15-0632LB). The Department denied the permit on July 23, 2003 and the denial was not appealed. Tebon, fully aware of the Department's denial, bought the property back from Weas on September 22, 2005 and applied for a Water Quality Certification on May 9, 2007.

a new application for Department review.

### NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to s. 227.42, Wis. Stats. and s. NR 299.05, Wis. Admin. Code, you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, PO Box 7921, Madison, WI 53707-7921.

A request for a contested case hearing must follow the service requirements found in s. NR 2.03 and the form prescribed in s. NR 2.05(5), Wis. Admin. Code, and must include the following information:

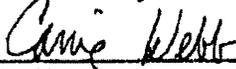
1. A description of the Department's action or inaction which is the basis for the request;
2. The substantial interest of the petitioner which is injured in fact or threatened with injury by the Department's action or inaction;
3. Specific information explaining why the petitioner's interests are adversely affected by the Department's determination;
4. Evidence of a lack of legislative intent that this interest is not to be protected;
5. An explanation of how the injury to the petitioner is different in kind or degree from the injury to the general public caused by the Department's action or inaction;
6. That there is a dispute of material fact, and what the disputed facts are;
7. The statute or administrative rule other than s. 227.42, Wis. Stats., which accords a right to a hearing;
8. Specific reasons why the proposed activity violates the standards under s. NR 299.04(1)(b), Wis. Admin. Code;
9. A statement that the petitioner will appear and present information supporting its objections in a contested case hearing.

This determination becomes final in accordance with the provisions of s. NR 299.05(7), Wis. Admin. Code, and is judicially reviewable when final. For judicial review of a decision pursuant to ss. 227.52 and 227.53, Wis. Stats., you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

Dated at Northeast Region Headquarters, Wisconsin on July 9, 2009.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES  
For the Secretary



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Carrie Webb

Water Management Specialist

- cc: Dale Simon – WT/4
- cc: Todd Vesperman, U.S. Army Corps of Engineers  
City of Sturgeon Bay Clerk  
Regional Aquatic Habitat Expert



6429 Maywood Avenue | Middleton, Wisconsin 53562-2822  
Ph: 608.827.5668 | Fax: 608.827.5633

[www.nrcdifference.com](http://www.nrcdifference.com)

June 14, 2010

Mr. Paul Heinen (GEF II/AD-8)  
Wisconsin Department of Natural Resources  
PO Box 7921  
Madison WI 53707-7921

**RE: *Tebon Application (IP-NE-2007-15-0387LB), Sturgeon Bay, WI  
NRC Project #0010-0142-01***

Dear Mr. Heinen:

The purpose of this letter is to describe the current conditions at the location for which the above-referenced application was submitted. Natural Resources Consulting, Inc. (NRC) gathered this information at the request of the Applicant, Mr. Cliff Tebon. Mr. Tebon asked me to address a suggestion I understand you made to Ms. Jennifer Esser, of Sen. Lasee's office, that he obtain an updated assessment of his parcel from a wetland scientist. NRC's findings are being provided for your consideration, as you re-evaluate the July 9, 2009 denial of Mr. Tebon's application for water quality certification in light of the Department's previous approval of a similar application on the adjacent lot.

On May 11, 2010 I investigated the Tebon property, an area of approximately 1/3 acre located at the northwest corner of Circle Ridge Place and South Ridgeway Drive in Sturgeon Bay, in the Purves Lagoon Subdivision (Lot 12). I observed a relatively flat (maximum 2 or 3 feet of elevation variation), open plot of land bounded on the south and east by residential roadways and adjacent embankment fill, on the north by a filled and landscaped lot with a home on it, and to the west by fill placed along the right-of-way of an electric distribution line. Surrounding areas to the south and west are characterized by mowed upland turfgrass, to the east is an undeveloped lot dominated by northern white cedar, and the remaining area to the north and northeast consists of thickly-settled residential land use.

Mr. Tebon's lot is surrounded by roads and fill and has no natural or culverted surface water inlets or outlets in evidence. The groundwater table ranged from zero to 1 foot below the ground surface at the time of the site visit; and standing water of 1 to 4 inches in depth was present in limited areas of the lot, primarily along a portion of its northern edge and near the northwestern corner.

Formerly part of a cedar swamp, woody vegetative cover currently consists of a few white birches, numerous trembling aspen sprouts, glossy buckthorn, honeysuckle, gooseberry, and staghorn sumac among the northern white cedar stumps. Remnant herbaceous associates of the cedar forest are limited to a few ferns, woodland horsetail, Canada mayflower, starry false Solomon's seal, wood anemone, marsh marigold, and jewelweed. Other common herb layer species include Japanese knotweed, bull thistle, dandelion, pineappleweed, Kentucky bluegrass, bugbane, yellow rocket, and forget-me-not.

Although the entire site still appears to meet the criteria for definition as a wetland, since the trees were

harvested the plant species invading the Tebon lot provide indication of a drying trend; perhaps due to a lowering of the water table in response to the low lake levels in recent years. As for its level of functioning as a wetland, the lot has poor wildlife habitat quality due to the limited cover and low structural diversity; and there is no opportunity for this wetland to provide water quality improvement or flood detention/attenuation services, given its physical isolation. Plant diversity is relatively high, although nuisance and noxious weed species (i.e. bull thistle) appear to be increasing in dominance, according to the adjacent homeowner.

A review of historical aerial photographs of the area shows it was once a small cedar swamp contiguous with the bay of Sturgeon Bay surrounded by agricultural land. Around 1960, dredging and filling began for the construction of a number of waterfront lots along an excavated inland canal. By the early 1990's, a series of roads had been constructed further inland for the remainder of the subdivision, and the mouth of the swamp had been transformed into a marina with a bulkheaded, filled shoreline. Most of the wetlands in the interior of the subdivision were filled in the mid-to late 1990's for single family homes until less than one acre of isolated wetland remained at the southern end of the subdivision closest to the new highway.

These less desirable lots – furthest from the water and closest to the highway - were the last ones sold. The southernmost Lot 12 (initially owned by Mr. Weas, then by Mr. Tebon) and the next parcel to the north, Lot 13 (initially owned by Mr. Churm), were both entirely made up of wetlands. Mr. Churm received Corps and WDNR permits (3-NE-97-0591LL) in 1997 and 1998, respectively, to fill 0.12 acre of Lot 13 for his home. But by the time Mr. Weas in 2003 and then Mr. Tebon in 2007 sought permit approval to place fill for private home construction, they each received Corps approval, but WDNR water management specialists had begun to apply the same regulatory standards for NR 103 in a more restrictive manner than had been the case when Mr. Churm applied. So despite the fact that the Corps of Engineers issued Section 404 Clean Water Act approval for the 0.15 acre of fill requested by Mr. Tebon and that his situation was essentially identical to that of Mr. Churm, Mr. Tebon's request received a decision from WDNR that was the opposite of what the Department granted to his neighbor. For this reason, Mr. Tebon is requesting your office's review of its earlier decision on his permit application.

Thank you for your consideration. Should you have any questions on NRC's observations, please do not hesitate to contact me. Mr. Tebon can be reached at 920-559-1281, should you have questions about the property or the permit application.

Sincerely,

***Natural Resources Consulting, Inc.***

Elizabeth A. Day, PWS, PH  
Senior Principal Wetland Scientist

Enclosure: plant list



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-3161/A  
MGG:1:....

RMR

Leev

D-N

soon in 9/26

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

SAJ  
xref N/A

1 AN ACT <sup>gen cat</sup> relating to: an exemption from wetland permitting and mitigation  
2 requirements for a discharge into a wetland located in the city of Sturgeon Bay.

*Analysis by the Legislative Reference Bureau*

into Under current law, with limited exceptions, a person may not discharge dredged or fill material a wetland unless the discharge is authorized under an individual or general permit issued by the Department of Natural Resources (DNR). DNR may not authorize the discharge pursuant to a permit unless it determines that the discharge will comply with all applicable state water quality standards.

This bill creates an exemption for a wetland from the permitting requirement from the DNR water quality certification process and from the requirement to obtain certain approvals from DNR. To qualify for the exemption, the discharge <sup>max</sup> must fill an area of wetland that exceeds 7,700 square feet, the discharge must be for the purpose of constructing a single family residence, and the site of the discharge must be at certain location in the city of Sturgeon Bay. <sup>not</sup>

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

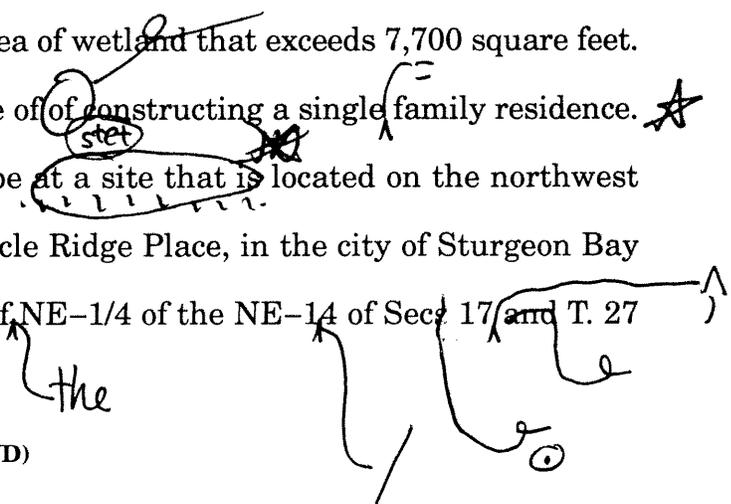
3 SECTION 1. 281.363 of the statutes is created to read:

4 281.363 Wetland permits, exception. (1) Notwithstanding s. 281.36, the  
5 discharge of dredged or fill material into a wetland shall be exempt from the

1 permitting and mitigation requirements under s. 281.36 and shall be considered to  
 2 have received water quality certification as required by 33 USC<sup>v</sup> 1341 (a) if all of the  
 3 following apply:

- 4 (1) 1) The discharge will not fill an area of wetland that exceeds 7,700 square feet.  
 5 (2) 2) The discharge is for the purpose of ~~of~~ constructing a single family residence. ~~star~~  
 6 (3) 3) The site of the discharge will be at a site that ~~is~~ <sup>set</sup> located on the northwest  
 7 corner of Ridgeway Drive and East Circle Ridge Place, in the city of Sturgeon Bay  
 8 and that within an area that consists of NE-1/4 of the NE-14 of Sec 17 <sup>and</sup> T. 27  
 9 N., R. 26 E.

10 (END)



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3161/1dn

MGG:l:....

leev

date

§  
Cory:

1. I recommend that you have DNR review this draft prior to introduction to make sure that they agree that the language will achieve your intent and that no changes are needed in the draft.
2. As we discussed on the phone, I also recommend that you discuss the proposal with the Army Corps of Engineers to make sure that the Corps will approve this discharge.

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215  
E-mail: mary.gibson-glass@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-3161/1dn  
MGG:eev:ev

September 27, 2013

Cory:

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2. As we discussed on the phone, I also recommend that you discuss the proposal with the Army Corps of Engineers to make sure that the Corps will approve this discharge.

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215  
E-mail: mary.gibson-glass@legis.wisconsin.gov

**Barman, Mike**

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**From:** Bruce, Cory  
**Sent:** Thursday, November 14, 2013 11:41 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB -3161/1 Topic: Exemption for certain wetlands

Please Jacket LRB -3161/1 for the ASSEMBLY.