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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 95-012

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. There is no treatment clause in this rule. A clause should be inserted preceding the text of ch. NR 323, reading as follows: “SECTION 1. Chapter NR 323 is created to read:”.

b. In s. NR 323.01, the words “these rules” should be replaced by the words “This chapter.”

c. Section NR 323.02 (1) seems overly broad. The chapter actually applies only to the placement and maintenance of bird nesting and similar habitat structures without application for a permit under s. 30.12 (2) or (3), Stats., as authorized under s. 30.12 (3) (bn), Stats. In addition, s. NR 323.02 (2) and (3) are correct statements, but do not relate to applicability. [See comment i below.]

d. An introductory clause to s. NR 323.03 should be created, reading: “In this chapter:”.

e. Section NR 323.03 (1) defines the term “aesthetically compatible,” although it appears that the term is used only once. This definition should be substituted for the one occurrence of the term in s. NR 323.04 (4). If the department chooses to retain this definition, the phrase “a nesting structure,” should be deleted from the definition.

f. Most of the definition of “nesting structure” consists of substantive requirements that should be placed in the text of the rule. [See s. 1.01 (7), Manual.] It is suggested that the term

be defined simply as “any structure or device constructed for the purpose of improving nesting habitat for wildlife, including birds, mammals and reptiles.”

g. The rule uses the terms “riparian” and “riparian owner” interchangeably. Section 30.12 (3) (bn), Stats., uses the term “riparian owner.” The rule should do the same.

h. The term “riparian zone of interest” defined in s. NR 323.03 (5) is not used anywhere in the rule. There is one occurrence of the term “riparian’s zone of interest,” however. At a minimum, the two terms should be reconciled. However, the one occurrence of the latter term could be replaced by the definition of the former term.

i. Following the definitions, a general provision should be inserted stating that a riparian owner may place and maintain a nesting structure on the bed of navigable waters without first obtaining a permit under s. 30.12, Stats., if the nesting structure complies with the standards contained in s. NR 323.04 and if the riparian owner submits the notification required under s. NR 323.05. This provision would shed greater light on the applicability of the chapter, perhaps obviating the need for s. NR 323.02 (2) and (3), as well as obviating the need for the awkward and unclear provision contained in s. NR 323.04 (1). [See the following comment.]

j. In s. NR 323.04 (1), to what does “authorization under this chapter” refer? It should be possible to identify the authorization by a specific cross-reference. This observation underscores the need for the general provision described in the preceding comment.

k. Section NR 323.05 (2) (intro.) should read: “Notification under sub. (1) shall include all of the following:”. All of the semicolons in that subsection should be deleted as should “and” in par. (a). [See s. 1.03 (intro.), Manual.]

l. The last clause of s. NR 323.06 (1) should be written in the active voice, beginning with: “...the department shall determine....”

4. Adequacy of References to Related Statutes, Rules and Forms

In s. NR 323.07, ss. 30.12 (5) and 30.298, Stats., should be cited as establishing the penalties for violation of this chapter.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The first sentence of the analysis would be clearer if it stated what the expedited review process is for.

b. The definition of “riparian zone of interest” could be clarified by consolidating it into a single sentence which makes reference to “special rights, as determined using the criteria set forth in s. NR 326.07.”

c. In s. NR 323.04 (5), by what standards is it determined whether a nesting structure is a material obstruction or hazard to navigation or detrimental to the public interest in navigable waters? This seems extremely vague.