

JUN 02 1997

DATE: June 1, 1997
TO: Rep. Brandemuehl
FROM: Mark Patronskey (266-9280)
SUBJECT: Navigability

Here is the navigability draft. I haven't had time to prepare a memo to describe it, so here are a few notes, and if the draft suits your purposes, I can do a memo later.

There are many possible ways to draft something like this. I chose one that seems to work, and is fairly broad in its scope, which is what I think you want. Let me know if you'd like to try a different approach.

SECTION 2 of the draft requires DNR to issue a permit for a structure or deposit in navigable water if the 4 conditions of the draft are met.

I didn't include provisions for the other DNR permits under ch. 30 (such as grading stream banks, irrigation or changing stream courses) because those already have agriculture-specific exemptions.

SECTIONS 3 and 4 of the draft exempts land that meets the specified conditions from shoreland zoning, construction site erosion control zoning, storm water management zoning and wetland zoning.

If the draft is OK, you should send it to LRB for drafting.

1 **AN ACT to renumber and amend 30.12 (2); and to create 30.12 (2) (b), 281.31 (2)**
 2 **(ag) and 281.31 (2r) of the statutes; relating to: the applicability of certain**
 3 **regulations to streams adjacent to land in agricultural use.**

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

4 **SECTION 1.** 30.12 (2) of the statutes is renumbered 30.12 (2) (a) and amended to read:

5 **30.12 (2) (a)** The department, upon application and after proceeding in accordance with
 6 **s. 30.02 (3) and (4), may grant to any riparian owner a permit to build or maintain for the**
 7 **owner's use a structure otherwise prohibited under sub. (1), if the structure does not materially**
 8 **obstruct navigation or reduce the effective flood flow capacity of a stream and is not**
 9 **detrimental to the public interest. The procedures in this subsection paragraph do not apply**
 10 **to permits issued under sub. (3).**

11 **SECTION 2.** 30.12 (2) (b) of the statutes is created to read:

12 **30.12 (2) (b)** Notwithstanding the conditions for issuance of a permit under par. (a), the
 13 **department shall issue the permit if all of the following apply:**

14 **1. The application relates to riparian land that is in agricultural use, as defined in s. 91.01**

15 **(1).**

16 **(2. The application relates to material or a structure placed in a stream.**

17 **(3. The material or structure proposed to be placed in the stream relates to the agricultural**
 18 **use of the land.**

19 **(4. The portion of the stream adjacent to the riparian land is navigable in fact for less than**
 20 **the entire time that the stream is ice-free in a year with average precipitation.**

21 **SECTION 3.** 281.31 (2) (ag) of the statutes is created to read:

1 **AN ACT to renumber and amend** 30.12 (2); and **to create** 30.12 (2) (b), 281.31 (2)
2 (ag) and 281.31 (2r) of the statutes; **relating to:** the applicability of certain
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7 owner's use a structure otherwise prohibited under sub. (1), if the structure does not materially
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