

STATE OF WISCONSIN)
) SS
LOWER WISCONSIN STATE RIVERWAY BOARD)

I, Mark E. Cupp, Executive Director of the Lower Wisconsin State Riverway Board and custodian of the official records, certify that the annexed rules, relating to the Lower Wisconsin State Riverway, were duly approved and adopted by this board on November 12, 1992. I further certify that this copy has been compared by me with the original on file in this board and that it is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand as the Executive Director of the Lower Wisconsin State Riverway Board at 202 N. Wisconsin Avenue, Muscoda, Wisconsin in the village of Muscoda, this 8th day of December, 1992.

Mark E. Cupp

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**ORDER OF THE STATE OF WISCONSIN
LOWER WISCONSIN STATE RIVERWAY BOARD CREATING RULES**

IN THE MATTER of creating chs. RB 1 and 2
of the Wisconsin Administrative Code pertaining
to policies and performance standard exclusions

Analysis Prepared by the Riverway Board

Statutory authority: ss. 30.43(3), 30.44(1)(a) and 227.11(2)(a), Stats.
Statutes interpreted: ss. 30.43(3), 30.44(1)(a), (1)(b), (3) and 30.45(3)(g) & (5), Stats.

The proposed rules:

1. Establish the Lower Wisconsin State Riverway Board mission, goals and objectives.
2. Define terms.
3. Identify performance standard or permit exclusion criteria including procedures for obtaining management plan approvals.

SECTION 1. Chapters RB 1 and 2 are created to read:

Chapter RB 1
Lower Wisconsin State Riverway Mission
Goals, Objectives and Definitions

RB 1.01 MISSION. The mission of the lower Wisconsin state riverway board is to protect and preserve the scenic beauty and natural values of the lower Wisconsin state riverway through administration of a permit program to control land use and development. However, in concert with the program to control land use and development, due consideration shall be given to the rights of landowners and the freedom to exercise the rights associated with land ownership. The challenge facing the lower Wisconsin state riverway board is to maintain the fragile and delicate balance between protection and preservation of the scenic beauty and natural values of the lower Wisconsin state riverway and protection and preservation of the rights of landowners

and residents within the boundary of the lower Wisconsin state riverway.

RB 1.02 GOALS AND OBJECTIVES. In addition to and consistent with the duties and powers delegated by the board in subch. IV, ch. 30, Stats., and to effectively fulfill its mission:

(1) The board shall:

(a) **Rules.** 1. Administer the state laws and administrative rules pertaining to the riverway; and

2. Coordinate its enforcement activities with the department, state and local law enforcement officials.

(b) **Compliance.** 1. Monitor performance standard compliance in cooperation with town, county, state and federal jurisdictions; and

2. Advise and assist riverway landowners to ensure land development and use is compatible with rules.

(c) **Cooperation.** Retain its status as an independent state agency while maintaining a cooperative relationship with the legislature, other state agencies and local units of government.

(d) **Technical assistance.** Provide technical assistance and information, as requested, regarding the board's performance standard compliance program.

(2) The board may:

(a) **Education.** Establish education and informational programs for citizens regarding the mission, goals and objectives of the board.

(b) **Preservation.** Assist municipalities in the riverway in efforts designed to protect, preserve and enhance sites of historic or geologic interest which contribute to the character of the riverway.

(c) **Economic development.** Assist municipalities in the riverway in economic development efforts consistent with protection and preservation of the riverway's scenic quality and natural values.

RB 1.03 DEFINITIONS. In this chapter and ch. RB 2:

(1) "Board" means the Lower Wisconsin state riverway board, established under s. 15.345(6), Stats.

(2) "Department" means the department of natural resources.

(3) "Leaf-on conditions" mean the time when leaves are on the deciduous trees.

(4) "Municipality" is as defined in s. 30.01(4), Stats.

(5) "Performance standard" means any of the requirements described in subch. IV, ch. 30, Stats., which are necessary for obtaining a permit under that subchapter.

(6) "Portable camping structure" means a collapsible camper or recreational vehicle.

(7) "River" has the meaning established in s. 30.40(14), Stats., but includes only that area below the ordinary high water mark of the main channel or channels, and does not include the bays, bayous and sloughs of the river bottoms.

(8) "Riverway" has the meaning established in s. 30.40(15), Stats.

(9) "Structure" has the meaning established in s. 30.40(18), Stats.

(10) "Timber" has the meaning established in s. 30.14(18m), Stats.

(11) "Top of bluff" means the visually most prominent portion of the bluff when viewed from the river, being either the highest geographic point or that point where there is a significant change in slope.

(12) "Visually inconspicuous" has the meaning in s. 30.40(21), Stats.

(13) "Woody vegetation" has the meaning established in s. 30.40(23m), Stats.

CHAPTER RB 2
Lower Wisconsin State Riverway
Permit Exclusions, Exemptions and Procedures

RB 2.01 PURPOSE. The purpose of this chapter is to establish exclusions for structures identified in this chapter from the permit requirements of s. 30.44(1)(a), Stats., as well as

exclusions from the timber and woody vegetation provisions of subch. IV, ch. 30, Stats., as authorized by ss. 30.43(3), Stats.

RB 2.02 APPLICABILITY. This chapter is applicable to any person constructing, modifying, repairing or placing a structure in the riverway or cutting or harvesting timber or woody vegetation to restore or maintain prairies in other native plant communities, enhance wildlife habitat or maintain confirmed archeological sites.

RB 2.03 STRUCTURE PERMIT EXCLUSIONS. In addition to statutory exemptions and exclusions from the permit requirement of subch. IV, ch. 30, Stats., a person may construct, modify, repair or place the following structures in the riverway without the necessity for a permit from the board under s. 30.44(1), Stats., or a county permit when the area is subject to shoreland zoning, under s. 30.44(9), Stats., if the structure meets the following standards:

(1) PORTABLE CAMPING STRUCTURES DESIGNED AND USED FOR RECREATIONAL CAMPING. (a) Structure visible from the river. 1. The portable camping

structure is designed and used for recreational camping and is visible from the river; and

2. The portable camping structure does not exceed 1600 cubic feet in size; and

3. The portable camping structure remains on the parcel of contiguous land for a period of use not to exceed 30 consecutive days unless it has been removed for a period of not less than 30 consecutive days prior to returning to that parcel of land for another period of use not to exceed 30 consecutive days.

(b) Structure not visible from the river. 1. The portable camping is designed and used for recreational camping and is not visible from the river; and

2. The portable camping structure remains on the parcel of contiguous land for a period not to exceed 180 days in a calendar year; and

3. The portable camping structure complies with the height requirement of s. 30.44(1)(e), Stats.

(2) STORAGE OF PORTABLE CAMPING STRUCTURES. Portable camping structures of a landowner in the riverway may be stored on the landowner's land if:

- (a) Visibility. The structure is not visible from the river;
- (b) Height. The height requirements of s. 30.44(1)(e), Stats., are complied with; and
- (c) Use. The structure is not used for recreational camping or human habitation.

(3) WATERFOWL BLINDS, WILDLIFE OBSERVATION BLINDS, TREE STANDS AND TREE HOUSES. Waterfowl blinds, wildlife observation blinds, tree stands for hunting and tree houses if the structure:

- (a) Size. Does not exceed 288 cubic feet in size; and
- (b) Visibility; color. Either of the following applies:
 1. Is visually inconspicuous; or
 2. Has exterior colors which harmonize with the natural surroundings during leaf-on

conditions.

Note: Waterfowl blinds and tree stands on state lands are further regulated by s. 29.27, Stats., and s. NR 45.09.

(4) STRUCTURES OF MINIMAL SIZE. Structures no larger than 64 cubic feet in size if the structures and any reasonable and necessary support structures:

- (a) Visibility. Are visually inconspicuous; or
- (b) Color. Have exterior colors which harmonize with the natural surroundings during

leaf-on conditions.

(5) OTHER STRUCTURES. (a) Other structures which are described in a permit application and which are judged to be of minimal size or not visible from the river by a 2/3 majority vote of the board's full membership.

- (b) Nonagricultural wire fences.

Note: Fences erected for agricultural use are exempted under s. 30.46, Stats.

Note: The exclusion granted under this section pertains solely to structure permits under subch. IV, ch. 30, Stats., and does not relieve a person from compliance with other laws such as shoreland zoning restrictions.

RB 2.04 MOBILE HOMES. Mobile homes used only for recreational purposes in the riverway are not subject to permit requirement of s.30.44(1)(b), Stats., and may not be considered a placement or replacement of a mobile home if:

(1) **MOBILE HOME VISIBLE FROM THE RIVER.** (a) The mobile home used for recreation is visible from the river;

(b) The mobile home does not exceed 1600 cubic feet in size; and

(c) The mobile home remains on the contiguous parcel of land for a period of use not to exceed 30 consecutive days unless it has been removed from the parcel for a period of not less than 30 consecutive days prior to returning to the parcel of land for another period of use which may not exceed 30 consecutive days.

(2) **MOBILE HOME NOT VISIBLE FROM THE RIVER.** (a) The mobile home used for recreation is not visible from the river;

(b) The mobile home remains on the parcel of contiguous land for a period not to exceed 180 days in a calendar year; and

(c) The mobile home complies with the height requirement of s. 30.44(1)(e), Stats.

(3) **STORAGE.** The mobile home is stored on land owned by the owner of the mobile home if:

(a) It is not visible from the river;

(b) The height requirements of s. 30.44(1)(e), Stats., are complied with; and

(c) The mobile home is not occupied or used for recreation or human habitation.

RB 2.05 ROUTINE MAINTENANCE. Routine maintenance activities that do not constitute repair of a damaged structure for the purpose of obtaining a permit under

s. 30.44(1)(b)4, Stats., include:

(a) Replacement of roofing shingles or reroofing projects which do not result in the structure being larger in size or more visible from the river during leaf-on conditions;

(b) Replacement of roofing shingles or reroofing projects if the exterior color or roofing material will harmonize with the surroundings during leaf-on conditions;

(c) Painting of exterior of structure or mobile home or replacement of or adding siding if:

1. The activity does not result in the structure being larger in size; or
2. More visible from the river during leaf-on conditions; or
3. If the exterior colors will harmonize with the surroundings during leaf-on conditions;

(d) Replacement of windows or doors if:

1. The activity will not result in the structure being more visible from the river during leaf-on conditions;
2. The exterior color harmonizes with the surroundings during leaf-on conditions; and
3. There is no significant increase in the amount of glass or other reflective material; and

(e) Other maintenance activities as described in a permit application and which are deemed as routine by a 2/3 majority vote by the board's full membership.

Note: The exclusion granted under this section pertains solely to structure permits under subch. IV, ch. 30, Stats., and does not relieve a person from compliance with other laws such as shoreland zoning restrictions.

RB 2.06 PRAIRIES AND NATIVE PLANT COMMUNITIES; WILDLIFE HABITAT; ARCHEOLOGICAL SITES. In addition to timber and woody vegetation exemptions or exclusions provided in subch. IV, ch. 30, Stats., a person may cut or harvest timber or woody vegetation in the riverway if the cutting or harvesting is for the purpose of restoring or maintaining a prairie or other native plant community, enhancing wildlife habitat or to maintain

confirmed archeological sites upon approval of a management plan by the department and issuance of a permit by the board under the following procedures:

(1) **APPLICATIONS.** Applications for management plans shall be made on forms prepared and provided by the department and shall include:

- (a) Name and address. The applicant's name and address;
- (b) Management objectives. Clearly stated management objectives of the application;
- (c) Schedule. An implementation schedule;
- (d) Erosion control measures. Applicable erosion control measures for the project;
- (e) Endangered or threatened species. Impacts on known populations of endangered or threatened species;
- (f) Wildlife. Impacts on wildlife other than endangered or threatened species;
- (g) Aesthetics. Impacts on natural aesthetics;
- (h) Additional information. Such additional information as may be requested by the department or board.

Note: Applications may be obtained from the Department of Natural Resources' offices at Rt. 1, Box 10, Dodgeville, 53533; 5350 Hwy. 133E, Boscobel, 53805; Hwy. C, Spring Green, 53588; and, the Muscoda board office at 202 N. Wisconsin Avenue, Muscoda, 53573.

(2) **DEPARTMENT APPROVAL.** The department shall review and approve the management plan within 30 days of receipt provided:

- (a) Management objectives. It is reasonable to believe the management objectives can be successfully accomplished on the land;
- (b) Erosion control safeguards. Erosion control safeguards deemed necessary are incorporated;
- (c) Endangered and threatened species. Endangered or threatened species will not be adversely affected;
- (d) Wildlife. Negative impacts on wildlife are minimal or are balanced by benefits to

other plant or animal species;

(e) Area involved. The area of the project is reasonable and appropriate;

(f) Schedule. Implementation schedules for the project are realistic and reasonable.

(3) DEPARTMENT DENIAL. If the department denies a management plan or application, the basis for denial shall be in writing and provided to the applicant and the board.

(4) BOARD APPROVALS. The board shall act on department approved management plans within 30 days of receipt. The board shall approve plans provided:

(a) Scenic beauty; natural values. The plan is consistent with scenic beauty and natural values of the riverway; and

(b) Visual intrusion. The project will not cause an existing structure, public access site, utility facility, walkway, stairway or bridge to become visually conspicuous from the river during leaf-on conditions.

RB 2.07 MINING AND QUARRYING. (1) PROHIBITION. No person other than those engaged in mining or quarrying in the riverway on or prior to October 31, 1989, may engage in that activity in the riverway.

(2) ACTIVE OPERATIONS. (a) Authorized operations. Persons engaged in mining or quarrying in the riverway on or prior to October 31, 1989, may continue the activity on the parcel of land upon which the activity is located if the activity is visually inconspicuous and if an affidavit on a form supplied by the board is filed with the board before January 1, 1994. The affidavit shall state the operation was active on October 31, 1989, and shall inform the person filing the affidavit the penalty for false swearing under s. 946.32, Stats.

(b) Area of authorization. The boundaries of the parcel of land mining and quarrying may be conducted on shall be those established in the description of the land in the lease, easement, deed or land contract executed prior to October 31, 1989 which establishes in the person engaged in the activity the interest in or authority to use the parcel. If the instrument described more than

one parcel of land, the boundaries and authorized parcel shall be limited to land contiguous to the mining or quarrying activity. A copy of the lease, easement, deed or land contract executed prior to October 31, 1989, shall be filed with the board together with the affidavit required under RB 2.07(2)(a), Wis. Admin. Code.

The foregoing rules were approved and adopted by the Lower Wisconsin State Riverway Board on July 9, 1992.

The rules 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 Muscodia, Wisconsin December 7, 1992

STATE OF WISCONSIN
LOWER WISCONSIN STATE RIVERWAY BOARD

By James Staff
James Staff, Chair

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