

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 resources 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 as defined in s. NR 191.03 (5).

(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:

0.6 (4), rounded to nearest 0.25) for residents and \$12.00 (8 x 1.5, rounded to nearest 0.25) for non-residents.

History: Cr. Register, October, 1977, No. 262, eff. 11-1-77; r. and recr. Register, March, 1994, No. 459, eff. 4-1-94; am. (2) (d), Register, June, 1995, eff. 7-1-95.

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.

History: Cr. Register, April, 1975, No. 232, eff. 5-1-75; renum. from NR 1.32, Register, October, 1977, No. 262, eff. 11-1-77; r. and recr. Register, March, 1994, No. 459, eff. 4-1-94.

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.

History: Cr. Register, January, 1980, No. 289, eff. 2-1-80; am. (2) (a) and (2) (b) 7., r. and recr. (3), r. (4) (a) 3., Register, October, 1982, No. 322, eff. 11-1-82; r. and recr. Register, March, 1994, No. 459, eff. 4-1-94.

NR 1.95 Wetlands preservation, protection and management. (1) **PURPOSE.** It is the intent of the natural resources board to establish rules for the preservation, protection and management of wetlands in the state of Wisconsin. The rules shall be applied in such a manner as to avoid or minimize the adverse effects on wetlands due to actions over which the department has regulatory or management authority and to maintain, enhance and restore wetland values.

(2) **AUTHORITY.** The department, under existing law, has the responsibility of making regulatory and management decisions which, directly or indirectly, affect the quantity and quality of many Wisconsin wetlands.

(a) Wisconsin has a history of active water resource protection under the public trust doctrine which originated in the northwest ordinance of 1787, the enabling act under which Wisconsin became a state, and the Wisconsin constitution.

(b) The department is designated under s. 144.025, Stats., as the central unit of state government responsible for protecting, maintaining and improving the quality of the waters of the state. Department actions must be consistent with the goal of maintaining, protecting and improving water quality.

(c) Under the Wisconsin environmental policy act, s. 1.11, Stats., the department is required to study, develop and describe appropriate alternatives to recommended courses of action for proposals which involve unresolved conflicts concerning alternative uses of available resources and to make decisions with the knowledge of their effects on the quality of the human environment.

(d) The department, pursuant to ss. 23.09 and 29.02, Stats., and s. NR 1.015, must provide for the protection, development and use of forests, fish and game, lakes, streams, plant life, flowers and other outdoor resources of the state. The department is obliged to develop and implement appropriate scientific management practices to achieve these objectives.

(3) **NATURAL RESOURCES BOARD FINDINGS.** (a) *Introduction.* The presence of wetlands signifies physical characteristics which are limiting factors in the human activities which may occur in and adjacent to them. What may be limitations for one use of a wetland may also be the principal values supporting a different use. The state's policy as articulated in its trusteeship of navigable waters and the statutes enacted to further the protection and enhancement of the quality of its waters, creates a presumption against activities which adversely affect those wetlands under department jurisdiction or control.

(b) *Wetland values.* Wetlands are known to possess a wide range of natural and human values, some or all of which may apply to a particular wetland under review. Assessing the value of a wetland is a complex Register, June, 1995, No. 474