

LOWER WISCONSIN STATE RIVERWAY BOARD

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MINUTES OF THE OCTOBER 9, 2008, RIVERWAY BOARD MEETING

The Lower Wisconsin State Riverway Board (LWSRB) met on Thursday, October 9, 2008, at the Crawford County Government Building in Prairie du Chien to conduct a regular monthly business meeting. The meeting was called to order at 5:00 p.m. by Chairman Bill Lundberg. All members were present with the exception of Gerald Dorscheid. Acknowledgment that the meeting was properly noticed was provided by Mark E. Cupp, Executive Director. A motion to approve the agenda was made by Melody Moore, seconded by Nick Nice. **MOTION CARRIED.** The minutes of the September 11, 2008, meeting were considered. A motion to approve was made by Don Greenwood, seconded by Ron Leys. **MOTION CARRIED.**

The Executive Committee report was presented by Chairman Lundberg who reviewed correspondence. Lundberg noted the board's request to have Governor Doyle proclaim 2009 as the Year of the Lower Wisconsin State Riverway to commemorate the 20-year milestone had been favorably received. A series of special events will be scheduled to highlight the Riverway. The Executive Committee and Fred Madison will work with Cupp on planning the events.

Cupp reported Dave Erickson, a former member of the Riverway's Citizen Advisory Committee and a producer of documentaries, was interested in producing an update of a documentary about the Riverway produced in the early 1990's entitled *Gather like the Waters*. Cupp said he told Erickson that the board would not be able to contribute to the production fiscally but could offer other assistance. He noted the Year of the Riverway activities may offer opportunities for filming.

Cupp said David Marshall, who gave a presentation on his research of backwater sloughs in the Riverway, had reported additional interesting finds during the final field research efforts in September. Marshall identified additional rare fish species and said freshwater shrimp were found. Cupp said Marshall's research fills an important niche in the data set for the Riverway and noted the need for additional research.

Cupp said he had met with the Iowa County Planning & Zoning Committee to discuss the board's request that the Riverway counties consider adoption of local ordinance to minimize the visual impacts of wind turbines located within or near the Riverway. Cupp noted Dorscheid is a member of the committee and had arranged a canoe tour of the Arena to Spring Green segment of the river for county board members to familiarize them with the issue. Cupp said Scott Godfrey, Iowa County Planning & Zoning Director, indicated statutory language limits a local unit of government's ability to regulate placement of wind turbines unless there are public health and safety concerns. The committee said it would review recommendations made by the LWSRB regarding possible aesthetic treatments for wind turbines. Cupp said he would work with the Operations Committee to develop possible guidelines for county consideration. Leys noted that there are requirements in Wisconsin, Minnesota and other states to have a percentage of electricity produced from renewable resources, such as wind power.

Cupp reported a letter had been received from Mike Lutz, DNR Legal Counsel, regarding the definition of "utility facility" as related to the Crystal/Fish/Mud Lake District pumping project. Cupp had requested clarification of the definition. Lundberg noted Lutz had concurred with Cupp's assessment that the project would be considered a utility facility under the Riverway regulations.

The Operations Committee report was presented by Acting Chairman Leys. The Crystal/Fish/Mud Lake District pumping project was discussed. A PowerPoint presentation was shown. The direct discharge to the river allowed under an emergency order issued by DNR required placements of culverts, small amounts of riprap and minor vegetative removal. Leys noted he, Lundberg, Greenwood and Cupp had met with Lake District representatives at the site prior to the board meeting. Cupp said the activity accomplished under the emergency order issued by DNR to allow direct

discharge to the river would require a permit to be issued by the LWSRB. Cupp said he had recommended issuance of a utility permit to accommodate burial of culverts and placement of riprap/breaker run, which has been deposited to minimize erosion. Minor disturbance of woody vegetation has occurred. Portions of the project area are visible from the Wisconsin River during leaf-on conditions. According to Tim Astfalk, the consultant from Mead & Hunt, the following activities occurred:

1. Replaced the existing 10-inch diameter pipe under trail with a new 12" diameter pipe - length 30 feet.
2. Excavated ditch approximately 2 feet deep by 2 feet wide for 120 feet.
3. Installed new 12-inch diameter pipe through wooded area for 150 feet.
4. Installed a new 10-inch diameter culvert under trail near the River - 20 feet length.

Cupp recommended the permit expire on November 30, 2008, so that the LWSRB could act on an extension at the November 13th meeting if the DNR emergency order would be extended. Cupp recommended the permit include the following conditions:

- Disruption of shoreline vegetation shall be minimized to reduce or eliminate the aesthetic impact of the activity;
- The applicant shall implement a re-vegetation plan developed by the DNR Riverway Forester to restore the natural character of the area to the greatest extent possible, if determined to be necessary by the LWSRB;
- Removal of vegetation shall be approved by the LWSRB before initiating the activity;
- The LWSRB shall approve any modifications to the plans, as submitted; and,
- The activity shall comply with all other applicable federal, state and local regulations.

A motion to approve issuance of a utility permit with the aforementioned conditions (for discussion purposes) was made by Leys, seconded by Madison. Madison said he continued to be concerned about the expiration date of the permit. Greenwood said the LWSRB issued permit should contain an expiration date congruent with the DNR emergency order expiration date. Moore expressed concerns regarding water quality. Cupp noted Jean Unmuth, DNR Biologist for the Riverway area, had done water quality monitoring. He said the Lake District is required to conduct water quality monitoring as well. Madison said it is clear that this is the first step toward long term pumping and direct discharge to the river. Madison reiterated his position that the pumping model should be recalculated. Lundberg said the LWSRB would be involved in a new permit process for a permanent discharge to the river proposal. Greenwood said the Lake District officials understand the need to contact the LWSRB before engaging in any new activities at the discharge site. Leys and Madison then withdrew the motion to approve the utility permit.

A motion was made by Greenwood, seconded by Madison, to approve issuance of a temporary utility permit with the conditions previously cited and with the expiration date to be concurrent with the expiration date of the DNR emergency order that allows the direct discharge to the river. **MOTION CARRIED.**

The request of Rebecca Roth, DNR Wildlife Biologist, for an extension to a previously issued permit for a site in the Town of Mazomanie, Dane County, was considered. Leys noted field inspections were conducted by Cupp and the LWSRB Operations Committee in conjunction with the previous permit activities in the vicinity. DNR personnel also have been present for several of the field inspections. The site is visible from the river during leaf-on conditions. An initial permit was issued for the activity in 2007. Plans call for removal of scrub willow from the area known as the Mazo Beach. The Riverway law precludes cutting of woody vegetation for many purposes but does allow removal of woody vegetation for activities associated with restoration or enhancement of native plant communities and/or wildlife habitat or maintenance of known archeological sites. In this case, Bob Hay, DNR Conservation Biologist/Herpetologist, has indicated removal of the willows will assist nesting turtles. Turtle populations along the lower Wisconsin River are decreasing. Removal of the willows will enhance a turtle's ability to cross the sandbar to reach suitable nesting habitat. The willows create obstructions that are difficult for turtles to traverse. No new structures become visible from the river

as a result of the activity. Floodplain forest is the visual backdrop. An ancillary benefit to willow removal will be a reduction in illegal sexual activity at the Mazo Beach; a problem that has increased in recent years. If the board does not approve the management permit, DNR staff likely will treat the willows with an herbicide. Chemical treatment to eliminate woody vegetation is not addressed under the Riverway regulations and, therefore, is allowed.

Cupp recommended issuance of a one-year extension to the permit with retention of the following conditions:

- No existing structure(s) shall become visible from the river as a result of the activity;
- The LWSRB shall approve of any modification to the plans, as submitted; and,
- The landowner or his/her agent shall notify the LWSRB upon initiation and completion of the activity.

A motion to extend the permit for one year was made by Leys, seconded by Madison. Greenheck asked if herbicide would be used to treat the willows. Cupp said he did not know but would find out. Action on the motion was taken. **MOTION CARRIED.**

The request of Eric Rapp for an amendment and extension to a previously issued permit for a site in the Town of Clyde, Iowa County, was considered. The consultant is Fred Gruber of Jewell and Associates. Leys said field inspections were conducted by Cupp and Operations Committee in conjunction with previous permit activity at the site. In addition, Cupp conducted a field inspection at the site on August 22nd and October 1st. Mr. Rapp was present for the field inspections and, for the second field inspection, also attending were Fred Gruber, Jewell and Associates; Frank Fetter, DNR Water Regulations and Zoning; and, two of the contractors. Plans call for extension of a ramp to an existing concrete structure that provides access to the river. The flooding event of June of 2008 caused damage to the existing structure. Repairs will be made and a ramp to accommodate discharge of water will extend another 15-16 feet from the end of the structure toward the river but not to exceed the ordinary high water mark. The concrete will be stained a brown color to match the existing walkway. Recovery of riprap or placement of new riprap may occur. The site is visible from the Wisconsin River during leaf-on conditions. A permit was issued by the LWSRB in 2005 for modifications to the former structure.

Madison noted the stepped system of the previous culvert would slow down the runoff. The reconstructed walkway without the "steps" would accelerate the flow of water to the river. Cupp recommended amending the permit to accommodate the new activity and extending the permit for a period of one year. The following conditions would be retained:

- The walkway shall be visually inconspicuous;
- The concrete shall be tinted a color approved by the LWSRB as indicated on the color chart provided by the consultant (Sandstone-5237);
- The walkway shall have sufficient safeguards to prevent erosion;
- The walkway shall be for pedestrian use only;
- The LWSRB shall approve of any removal of woody vegetation between the road and the river;
- The activity shall comply with all other applicable federal, state and local regulations;
- The LWSRB shall approve of any modifications to the plans, as submitted; and,
- The landowner or his/her agent shall notify the LWSRB upon initiation and completion of the project.

Leys made a motion, seconded by Madison, to amend and extend the previously issued permit to reflect the new activity. **MOTION CARRIED.** (NOTE: Greenwood abstained.)

The request of Lyle Kuhnau for an amendment and extension to a previously issued timber harvest permit for a site in the Towns of Troy and Prairie du Sac, Sauk County, was considered. The consultant is Joe Bagnowski of Meister Log and Lumber. Leys said a field inspection was conducted by Cupp in conjunction with previous permit

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activity at the parcel. On Monday, July 9, 2007, Cupp and Brad Hutnik, DNR Riverway Forester, met with Mr. & Mrs. Kuhnau and their son to discuss the proposed harvest. The harvest will include the Bluff, Riverview, River Edge and Resource Management Zones. A field inspection was conducted by Cupp and Joe Bagnowski, the timber buyer, to review the marked trees prior to phase I of the harvest. Cupp and Hutnik also conducted a separate field inspection to review the harvest plans and proposed road building. On September 30, 2008, a field inspection was conducted at the site by Cupp, Hutnik and Bagnowski. The September 30th field inspection revealed the additional harvest area will include the Resource Management Zone and a small portion of the Riverview Zone near the river, not the bluff. Plans call for the selective removal of merchantable hardwoods. No new logging roads will be constructed. There will be minimal, if any, visual impact when viewed from the river during leaf-on conditions. The harvest will be conducted when the ground is frozen or dry.

Cupp recommended for issuance of a one-year extension to permit with the following standard permit conditions:

- The harvest shall comply with the basal area limits for the residual stand in the Bluff Zone, Riverview Zone and River Edge Zone as detailed in Chapter NR 37, Wisconsin Administrative Code;
- In the Bluff Zone, Riverview Zone and River Edge Zone, all trees selected for harvest shall be appropriately marked and reviewed by the LWSRB for compliance with the applicable performance standards prior to initiation of the harvest;
- In the Bluff Zone, Riverview Zone and River Edge Zone, the harvest shall be limited to the times when the ground is frozen or dry and the leaves are off the deciduous trees;
- The LWSRB shall review the location and design of all new logging roads, if any, in the Bluff Zone, Riverview Zone and River Edge Zone;
- The new logging roads, if any, shall comply with the applicable performance standards regarding grade and erosion control and shall be re-seeded upon completion of the harvest;
- The LWSRB shall review the location and design of all small regeneration cuts, if any, in the Riverview Zone to assure compliance with the applicable performance standards;
- If necessary, the various zones shall be delineated prior to initiation of the harvest;
- The landowner or his/her agent shall notify the LWSRB within 10 working days upon completion of the harvest and, if necessary, the LWSRB shall conduct a post-harvest field inspection; and,
- The LWSRB shall review modification of the plans, as submitted, for compliance with the applicable performance standards.

A motion to approve the amendment and a one-year extension with retention of the original permit conditions was made by Leys, seconded by Madison. **MOTION CARRIED.**

The permit request of Michael Weiss for placement of a deer stand on a parcel in the Town of Prairie du Sac, Sauk County, was considered. Leys explained a field inspection was conducted by Cupp on September 16, 2008. Mr. Weiss and his son also were present for the field inspection. A children's playhouse was moved from the Weiss farm to a site near the river for use as a deer stand. A citizen photographed the structure and provided Cupp with the images. An investigation was initiated by DNR Conservation Warden David Youngquist, who determined the property belonged to Mr. Weiss. Cupp contacted Mr. Weiss and described the permit requirements of the Riverway law. During the site visit, Cupp determined the deer stand is visually inconspicuous from the river during leaf-on conditions. Adequate screening vegetation exists at the site. There is a small portion of river visible from the structure. The exterior colorization is gray and should be evaluated by the board. The structure appears to be in the floodplain and is near the "Second Channel" area. The elevated structure is 6 ft. x 6 ft. x 8 ft. (height) and sits upon 8 ft. stilts for a total height of 16 feet.

Cupp recommended issuance of a one-year permit for the activity with the following conditions:

- The existing screening vegetation shall be maintained and replaced if damaged or destroyed;
- The exterior colorization of the structure (including roof color) shall harmonize with the natural surroundings during leaf-on conditions;
- There shall be a limited amount of glass or other reflective material;
- The height of the structure shall not exceed 18 feet;
- The LWSRB shall review any modification of the plans, as submitted, for compliance with the applicable regulations;
- The landowner or his/her agent shall notify the LWSRB upon completion of the project; and,
- The activity shall comply with all other federal, state and local regulations.

Leys made a motion, seconded by Greenwood, to approve issuance of a permit for the activity with conditions, including the addition of a condition requiring the exterior colorization to be changed. **MOTION CARRIED.**

A permit request by the House on the Rock Resort for management of a native plant community at a site in the Town of Wyoming, Iowa County, was considered. Leys said an initial field inspection was conducted by Cupp on September 30, 2008. Brad Hutnik, DNR Riverway Forester, and Matt Schneider and another gentleman from the House on the Rock staff were present for the field inspection. Field inspection revealed the site is visible from the Wisconsin River during leaf-on conditions. The structure was originally planned to be a 10-story hotel. Only the base and one floor were completed. The structure once was used as the lodge for the ski hill operation. In recent years, it has been used for wedding receptions, parties, banquets and meetings. Leys said he, Lundberg, Greenwood, Cupp and Hutnik met with House on the Rock Resort officials at the site prior to the board meeting.

The Wintergreen staff wishes to cut trees and woody vegetation to improve the view to the river for their guests. Cupp explained that the removal of trees and woody vegetation to improve a view would not be allowed under the Riverway law. However, an area was identified for woody vegetation removal that would open a view toward Spring Green but would not make the structure more visible from the river during leaf-on conditions. The vegetative removal could occur under a management permit for maintenance of a native prairie. Hutnik determined the site is a prairie remnant and identified several prairie plants at the site. Black locust and miscellaneous other shrubs would be removed. Also, a small number of trees and shrubs would be removed for building maintenance purposes. The removal of the woody vegetation will not enhance visibility of the structure.

Leys said Cupp recommended issuance of a permit for the activity with the following conditions:

- The activity shall not result in an existing structure becoming visible from the river;
- The LWSRB shall approve any modifications to the plans, as submitted;
- The landowner or his/her agent shall notify the LWSRB upon initiation and completion of the project.

Greenwood said the site is very beautiful and offers a great view of the lower Wisconsin River valley. He said it used to be quite a popular place to view the river and appreciate the beauty of the area. He said the board may wish to consider some type of commercial waiver for the future and noted it would require a change in the law. Greenwood said the site is not totally pristine. He said the House on the Rock Resort site would offer a tremendous view if an overlook was developed, similar to that at Pike's Peak in Iowa that overlooks the confluence of the Wisconsin and Mississippi rivers, and again noted the constraints of the Riverway law in regard to development of overlooks. Leys agreed it would nice to have an overlook developed on public land that would offer a Pike's Peak type of vista. Madison said the prairie restoration site by the resort facility probably was prairie before the settlement era. A member of the public, Bill Howe of Prairie du Chien, asked when the facility was constructed.

Cupp said it was built prior to enactment of the Riverway law. Howe said there are not enough opportunities in the area to view the grandeur of nature. Lundberg said he appreciated the concept but noted the LWSRB must administer the statutes as they are written.

A vote on the motion to approve issuance of a permit with conditions was taken. **MOTION CARRIED.**

(NOTE: Leys departed and Ritchie Brown became Acting Chair of the Operations Committee.)

The construction of the new USH 14 bridge at Spring Green was discussed. Cupp said he attended the pre-construction meeting held in Madison and learned the boat landing will be closed beginning in October of 2008 and will not re-open until the project is completed, perhaps in one year. Emergency personnel will have access to the locked gate. There will not be a new landing constructed at Bob's Riverside. Recreational users will have to use the Otter Creek access site near Lone Rock or the Arena landing for motorized boat access.

Brown said Cupp had issued one permit since the last meeting. Cupp said a permit was issued to Scott Meister of Meister Cheese Company for placement of pipes across DNR land near Muscoda. The site is not visible from the Wisconsin River during leaf-on conditions.

The Budget & Office Committee report was presented by Chairman Nice who reviewed the status of the FY 09 budget. Cupp said he had copies of the LWSRB biennial budget proposal for board members who wished to review the entire document.

There was no report from the Personnel Committee.

The Executive Director's report was given by Cupp who reviewed the materials in the board members' packets.

No items were discussed under board members' business.

During the public comment session, Bill Howe of Prairie du Chien asked for the board's support to develop a Crawford County public access site at the former Mark's Riverside in the Town of Marietta, near the intersection of Hwys. 60 & 61. He said a safer access to the site also is required and suggested the access should come off of Hwy. 60, instead of Hwy. 61.

A motion to adjourn until November 8th when the meeting will be held in Avoca was made by Brown, seconded by Madison. **MOTION CARRIED.**

END

For further information, corrections, additions or deletions to the minutes, contact Mark Cupp, Executive Director, at (608) 739-3188 or 1-800-221-3792.

Minutes submitted by: