

**ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
AMENDING, REPEALING AND RECREATING, AND CREATING RULES**

The Wisconsin Natural Resources Board proposes an order to amend NR 118 (title), 118.01 and 118.02; repeal and recreate NR 118.03, 118.05, 118.06 and 118.07; and create NR 118.04, 118.08 and 118.09, relating to minimum standards and guidelines for Lower St. Croix National Scenic Riverway zoning ordinances.

WT-28-03

Analysis prepared by the Department of Natural Resources

**Statutory authority:** Statutes that authorize the promulgation of this rule include ss. 30.27 and 227.11 (2)(a), Stats. These sections grant rule-making authority to the Department to develop guidelines and standards for local zoning ordinances which apply to banks, bluffs and bluff tops of the Lower St. Croix River. The purpose of these standards is to ensure the continued eligibility of the Lower St. Croix River for inclusion in the national wild and scenic rivers system and to guarantee the protection of the wild, scenic and recreational qualities of the river for present and future generations.

**Statutes interpreted:** In promulgating this rule, s. 30.27, Stats., has been interpreted by the Department to outline minimum riverway protection standards that must be included in local zoning ordinances. These standards are applicable to counties, cities, villages and townships within the riverway boundary.

**Plain Language Rule Analysis:** Chapter NR 118, Wis. Adm. Code, was initially drafted in response to the designation of the Lower St. Croix River as part of the national wild and scenic rivers system. This rule was designed to provide additional protection above and beyond that provided by ch. NR 115 (the state's shoreland management program), by expanding development restrictions to further protect bluff areas, natural scenic beauty, and also applying these restrictions to incorporated areas.

The proposed amendments to ch. NR 118 are intended to allow counties, cities, villages and towns in the Lower St. Croix River district more flexibility in how they regulate land use within the boundaries of the Lower St. Croix National Scenic Riverway, and to give property owners more land use options, while still protecting the public interest and preserving the exceptional scenic, natural and cultural characteristics of the Lower St. Croix River valley.

The revisions are based on concepts contained within the Cooperative Management Plan (CMP) for the Lower St. Croix National Scenic Riverway, which was completed in January, 2002, in a joint effort with the National Park Service, Minnesota and Wisconsin. This plan was completed with extensive public involvement over a seven year period. The plan was adopted by the agencies after an analysis of the benefits, environmental impacts, and cost of alternative courses of action and a thorough consideration of public input. This plan emphasizes maintaining and enhancing the Riverway's diverse character while allowing limited, planned development.

Many changes have occurred in the Riverway since adoption of the original ch. NR 118 in 1976. The proposed changes to the rule are needed to adapt to current and projected future conditions, while implementing the concepts of the CMP. Over time it has become increasingly clear that change is needed to clarify standards, provide flexibility, improve consistency and to improve local zoning authorities' ability to implement these standards through their zoning ordinances in a timely manner.

Implementation of the revised rules will provide clearer standards for maintenance, reconstruction or expansion of nonconforming structures, increased flexibility for property owners to modify existing structures in return for shoreline and visual mitigation practices, enhanced scenic values through visual buffering, and more efficient administrative procedures.

**Federal Regulatory Analysis:** The Lower St. Croix National Scenic Riverway was added to the National Wild and Scenic rivers system in 1972 (Public Law 92-560). The Riverway extends 52 miles from St. Croix Falls/Taylor's Falls to the confluence with the Mississippi River at Prescott/Point Douglas. The National Park Service, Minnesota Department of Natural Resources, and Wisconsin Department of Natural Resources jointly manage the riverway. The agencies jointly developed the CMP which was adopted by each agency.

The Wild and Scenic River Act specifies the United States Department of Interior, Minnesota and Wisconsin shall jointly prepare a comprehensive master plan relating to boundaries, classification and development. The National Park Service has land acquisition authority in the federally administered zone north of Stillwater and some management responsibilities in the state administered zone south of Stillwater. The states of Wisconsin and Minnesota have authority to require local units of government to enact zoning ordinances in the entire Lower St. Croix National Scenic Riverway. The National Park Service and the states all have management responsibility over water surface use in the Riverway.

**State Regulatory Analysis:** The designation of the Lower St. Croix as a National Scenic Riverway requires this section of river to receive greater protection than other waters in the state to maintain the natural scenic beauty of this waterway. Chapter NR 118 outlines the standards and criteria needed to regulate land use and development within the Riverway boundaries to ensure long term protection.

The State of Minnesota also has special protection for the Lower St. Croix River through requirements outlined in Rule 6105. These standards are similar to those contained in ch. NR 118 although there are differences based on different state laws and interpretations. Minnesota uses similar distances for building setbacks from the river and for minimum lot width. The states do differ on where the shoreline setback is measured from and how the ordinary high water mark is determined. In practice this difference may result in reduced shoreline setbacks in Minnesota when compared to standards in Wisconsin. The states also have somewhat different standards in treatment of nonconforming structures.

Minnesota has also been in the process of developing an update to their rules; however, it is not known when those rules will be completed.

The State of Michigan also has a wild and scenic rivers protection program to provide special protection to designated rivers. This program is managed very similar to other wild and scenic river protection programs nationwide. The protection standards are outlined in Natural River Zoning Rule 281 which outlines standards for river setbacks, minimum lot widths, special vegetation management standards and nonconforming structure improvements.

**A Summary of Factual Data:** This rule was developed based on guidelines outlined in the Cooperative Management Plan and Environmental Impact Statement for the Lower St. Croix National Scenic Riverway. The final CMP was the result of analysis completed over a seven year period in a collaborative effort between the National Park Service, Minnesota, Wisconsin, local agencies and the public. This was a comprehensive effort which began by collecting data, analyzing Riverway issues, developing a vision statement, goals, and objectives. Data on the lower Riverway's resources, users and the socio-economic environment were collected and analyzed. The plan identified issues and concerns, and examined alternative Riverway management options to address these issues. The final preferred management option was selected from a range of alternatives. This option included land use regulation guidelines for Wisconsin and Minnesota which are the basis ch. NR 118.

The planning process identified some key problem areas concerning application of the existing zoning standards and regulations in both states. Application of the zoning standards has been controversial since the beginning of the Riverway regulations. Confusion and misunderstandings have resulted from unclear, subjective language, and inconsistent application of zoning standards. Landowners and local governments have been frustrated in applying and interpreting the intent of the Riverway regulations. The proposed ch. NR 118 has been developed to clarify the standards and provide more flexibility in the

application of land use standards and restrictions that will allow reasonable improvement of private properties, while still protecting the resources and natural scenic beauty of the Riverway.

**Effect on Small Businesses:** Small businesses are not expected to be significantly impacted by the proposed rule changes. Most small businesses are located in the newly created River Town, Small Town, and Small Town Historic management zones, and the rules allow more flexibility for reconstruction or expansion of their buildings. Standards contained in this rule may also limit some facility expansion based on potential impacts to the Riverway. The rules require local units of government to adopt zoning based on these rules. The local ordinances will be enforced by the local units of government.

**Anticipated Costs Incurred by the Private Sector:** Costs will be incurred for those actions that require a permit under ch. NR 118. Submission of an application for a permit under the local ordinances will result in costs to the applicant to provide the needed background information. The application costs will vary by individual permit application depending on the type of project undertaken and the level of detailed information needed to provide local zoning authorities sufficient background information to make a determination. This rule will require mitigation to offset the impacts of proposed projects in the riverway. Mitigation costs will be incurred for vegetative plantings, runoff control and other types of practices that may be needed.

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SECTION 1. NR 118 (title) is amended to read:

~~STANDARDS AND CRITERIA FOR THE LOWER ST. CROIX NATIONAL SCENIC RIVERWAY~~

SECTION 2. NR 118.01 is amended to read:

**NR 118.01 Purpose.** The following rules are necessary to reduce the adverse effects of overcrowding and poorly planned shoreline and bluff area development, to prevent pollution and contamination of surface waters and groundwaters and soil erosion, to provide sufficient space on lots for sanitary facilities, to minimize flood damage, to maintain property values, and to preserve and maintain the exceptional scenic, cultural and natural characteristics of the water and related land of the Lower St. Croix ~~river valley~~ riverway in a manner consistent with the national wild and scenic ~~river-rivers~~ act (P.L. 90-542), the federal Lower St. Croix river act of 1972 (P.L. 92-560) and the Wisconsin Lower St. Croix river act (~~chapter 197, laws of Wisconsin, 1973~~ s. 30.27, Stats.).

SECTION 3. NR 118.02 is amended to read:

**NR 118.02 Applicability.** (1) ~~LOWER ST. CROIX RIVER DISTRICT RIVERWAY BOUNDARIES.~~ These rules shall apply within the boundaries of the lower St. Croix national scenic riverway as set forth in the master plan jointly prepared by the states of Minnesota and Wisconsin and the national park service pursuant to P.L. 92-560 except that the incorporated area of the city of St. Croix Falls lying west of STH 35 and STH 87 in section 30, T34N, R18W shall be included.

Note: A boundary map and legal description of the riverway boundary is available in the office of each local zoning authority within the district boundaries.

(2) ~~LOWER ST. CROIX RIVER DISTRICT RIVERWAY MANAGEMENT ZONES.~~ Each ordinance enacted or amended by a city, village, town or county within the Lower St. Croix national scenic riverway boundaries shall designate ~~a lower St. Croix river district riverway management zones~~ in accordance with the previously described boundaries s. NR 118.04.

(3) ~~LOCAL REGULATIONS ZONING ORDINANCES.~~ Counties, cities, villages and towns within the Lower St. Croix national scenic riverway boundaries shall adopt zoning ordinances as required by s. 30.27, Stats., except that a town is not required to adopt an ordinance under this chapter if the county in

which the town is located has adopted a local zoning ordinance that applies to the town. Local ~~regulations~~ zoning ordinances adopted pursuant to s. 30.27, Stats., and this chapter may be more, but not less, restrictive than the standards contained in these administrative rules. In no case shall a use or activity allowed by these rules be permitted contrary to local zoning ~~regulations~~ ordinances.

SECTION 4. NR 118.03 is repealed and recreated to read:

**NR 118.03 Definitions.** For the purpose of this chapter:

(1) "Accessory structure" means a subordinate structure, the use of which is incidental to, and customarily found in connection with, the principal structure or use of the property. Accessory structures include, but are not limited to, detached garages, sheds, barns, gazebos, patios, decks (both detached and attached), swimming pools, hot tubs, fences, retaining walls, driveways, parking lots, sidewalks, detached stairways and lifts.

(2) "Accessory use" means a use subordinate to and serving the principal use on the same lot and customarily incidental thereto.

(3) "Agriculture" means beekeeping; livestock grazing; orchards; raising of grain, grass or seed crops; raising of fruits, nuts or berries; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising.

(4) "Antenna" means any device or equipment used for the transmission or reception of electromagnetic waves, which may include an omni-directional antenna (rod), a directional antenna (panel) or a parabolic antenna (disc).

(5) "Bed and breakfast operation" means a place of lodging for transient guests that is the owner's personal residence, that is occupied by the owner at the time of rental, and in which the only meal served to guests is breakfast.

(6) "Bluffline" means a line along the top of the slope preservation zone.

(7) "Building line" means a line measured across the width of a lot at that point where the principal structure is placed in accordance with setback provisions.

(8) "Camouflage design" means a wireless communication service facility that is disguised, hidden or screened, but remains recognizable as a tower or antenna.

(9) "Compliant building location" means an area on a lot where a building could be located in compliance with all applicable ordinance requirements.

(10) "Conditional use" means a use that is specifically listed in a local zoning ordinance as either a conditional use or special exception and that may only be permitted if the local zoning authority determines that the conditions specified in the ordinance for that use are satisfied.

(11) "Department" means the Wisconsin department of natural resources.

(12) "Disabled" means having a physical or mental impairment that substantially limits one or more major life activities.

(13) "Earth-tone" means colors that harmonize with the natural surroundings on the site during leaf on conditions.

(14) "Expansion" means an addition to an existing structure regardless of whether the addition is vertical or horizontal or both.

(15) "Filtered view of the river" means that one can see the river through the vegetation, while any structure remains visually inconspicuous.

(16) "Footprint" means the land area covered by a structure at ground level, measured on a horizontal plane including the area occupied by roof overhangs. The "footprint" of a residence includes attached garages and porches, but excludes decks, patios, carports and roof overhangs.

(17) "Foundation" means the underlying base of a building or other structure, including but not limited to pillars, footings, and concrete and masonry walls.

(18) "Human habitation" means the use of a building or other structure for human occupancy, including but not limited to cooking, eating, bathing and sleeping.

(19) "Land division" means any division of a parcel of land by the owner or the owner's agent, for the purpose of transfer of ownership or building development, which creates one or more parcels or building sites of 20 acres or less.

(20) "Landscape architect" means a person who has graduated with a major in landscape architecture from a college accredited by the American society of landscape architects.

(21) "Lift" means a mechanical device, either temporary or permanent, containing a mobile open top car including hand or guard rails, a track upon which the open top car moves, and a mechanical device to provide power to the open top car.

(22) "Local zoning ordinance" means any county, town, city or village zoning ordinance, portion of an ordinance, or amendments thereto, adopted by a local unit of government, with authority from state enabling legislation, which regulates the use of land within the Lower St. Croix riverway.

(23) "Lot" means a contiguous parcel of land with described boundaries.

(24) "Lower St. Croix riverway" or "Lower St. Croix national scenic riverway" means the area described in s. NR 118.02 (1).

(25) "Management zones" means the Lower St. Croix riverway management zones established in s. NR 118.04.

(26) "Mitigation" means action taken to minimize the adverse impacts of development. The term "mitigation" includes, but is not limited to, the installation of vegetative buffers, the removal of nonconforming structures from the shoreland setback area, and the implementation of best management practices for erosion control and storm water management.

(27) "Net project area" means developable land area minus slope preservation zones, floodplains, road rights-of-way and wetlands.

(28) "Nonconforming structure" means a building or other structure whose location, dimensions or other physical characteristics do not conform to the standards in the current local zoning ordinance but which was legally constructed or placed in its current location prior to the adoption of the ordinance or ordinance amendment that made it nonconforming.

(29) "Nonconforming use" means the use of land or a structure or other premises that does not conform to the land use restrictions in the current local zoning ordinance, but which was legally established prior to the adoption of the ordinance or ordinance amendment that made it nonconforming.

(30) "Ordinary high water mark" has been defined by the Wisconsin supreme court to mean the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high water mark.

(31) "Ordinary maintenance and repair" means any work done on a nonconforming structure that does not constitute expansion, structural alteration or reconstruction and does not involve the replacement, alteration or improvement of any portion of the structure's foundation.

(32) "Planned cluster development" means a pattern of development that places residences into compact groupings as a means of preserving open space.

(33) "Porch" means a building walkway with a roof over it, providing access to a building entrance.

(34) "Principal structure" means the main building or other structure on a lot that is utilized for the property's principal use. The term "principal structure" includes attached garages and porches.

(35) "Reasonable accommodation" means allowing a disabled person to deviate from the strict requirements of the county's zoning ordinances if an accommodation is necessary and reasonable, in order not to unlawfully discriminate against the disabled person and to allow them equal housing opportunity.

Note: Federal courts have interpreted the "reasonable accommodations" requirement in the Federal Fair Housing Act to mean that an accommodation is reasonable "if it does not cause any undue hardship or fiscal or administrative burdens on the municipality, or does not undermine the basic purpose that the zoning ordinance seeks to achieve." *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1186 (E.D.N.Y. 1993)

(36) "Reconstruction" means the replacement of all or substantially all of the components of a structure other than the foundation.

(37) "Selection cutting" means the removal of selected trees throughout the range of merchantable sizes at regular intervals, either singly or in small groups, leaving a uniformly distributed stocking of desirable tree and shrub size classes.

(38) "Setback" means the minimum horizontal distance between a structure and either the ordinary high water mark or the bluffline.

(39) "Shelterwood cut" means a partial removal of mature trees leaving trees of desirable species and form to provide shade, seed source and a desirable seed bed for natural regeneration with the final removal of the overstory after adequate regeneration is established.

(40) "Single-family residence" means a detached structure used for human habitation for one family.

(41) "Slope preservation zone" means the area riverward from the bluffline where the slope towards the river is 12% or more, as measured horizontally for a distance of not more than 50 feet or less than 25 feet.

(42) "Small regeneration cut" means a harvest of not more than one-third of the contiguous forested ownership within a 10-year period with each opening not exceeding 6 acres in size and not closer than 75 feet at their closest points.

(43) "Stealth design" means a wireless communication service facility that models or mimics in size or shape and color something in the surrounding landscape, such as silos in farm settings and trees in forested lands, and is unrecognizable year round as an antenna or antenna mount.

(44) "Structural alteration" means the replacement or alteration of one or more of the structural components of any of a nonconforming structure's exterior walls.

(45) "Structural component" means any part of the framework of a building or other structure. The structural components of a building's exterior walls include the vertical studs, top and bottom plates, and window and door sills and headers. A structural component may be non-load-bearing, such as the framework of a wall at the gable end of a one-story house. Wall-coverings, such as siding on the exterior and dry wall on the interior, are not included in the definition of "structural component."

(46) "Structural erosion control measures" means a retaining wall or other man-made structure whose primary function is to control erosion.

(47) "Structure" means any man-made object with form, shape and utility, that is constructed or otherwise erected, attached to or permanently or temporarily placed, either upon the ground, a river bed, stream bed or lake bed or upon another structure. For the purposes of this chapter, the term "structure" includes swimming pools, hot tubs, patios, decks and retaining walls, but does not include landscaping or earthwork such as graded areas, filled areas, ditches, berms or earthen terraces. The term "structure" does not include small objects that are easily moved by hand, such as lawn chairs, portable grills, portable picnic tables, bird feeders, birdhouses and birdbaths.

(48) "Substandard lot" means a lot with dimensions that do not conform to all of the requirements of the local zoning ordinance.

(49) "Transmission services" means electric power lines, telephone and telegraph lines, communication towers, cables, sewage lift stations, sewer and water pipes, and other pipes, conduits and accessory structures that are used to transport power, convey information or transport material between 2 points, other than wireless communication service facilities.

(50) "Visually inconspicuous" means difficult to see, or not readily noticeable, in summer months as viewed from that or near the mid-line of the Lower St. Croix river.

(51) "Wetland" has the meaning found in s. 23.32 (1), Stats.

Note: Section 23.32 (1), Stats., defines "wetland" to mean "an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions."

(52) "Wireless communication service facilities" means hardware that provides wireless communication services including antennas, towers, all associated equipment, and buildings and other structures.

SECTION 5. NR 118.04 is created to read:

**NR 118.04 Lower St. Croix riverway management zones.** The Lower St. Croix riverway is divided into 5 management zones. Management zones exist without regard to municipal boundaries and may not be changed by annexation or any action other than revision of these rules. The following management zones are established as follows:

(1) RIVER TOWN. (a) The river town management zone reflects the character of a small city and contains a mixture of commercial, park and residential developments that reflect the community's historic

character. Dense, intensive development may be present, including utilities, multistory structures and nonresidential buildings.

(b) The river town management zone is established in both of the following locations:

1. In an area bounded on the north by the north corporate limit of the city of Hudson as it existed on June 1, 2004 and on the south by the south corporate limit of the city of Hudson, as it existed on June 1, 2004.

2. In an area bounded on the north by the north city limits of Prescott as it existed on January 1, 1976, and on the south by the confluence of the St. Croix and Mississippi rivers.

(2) SMALL TOWN. (a) The small town management zone is dominated by large-lot single-family residences. Natural vegetation and landscaped environments are interspersed with residential development. Shoreline areas are a mix of natural vegetation and residential lawns, with some portions being largely undisturbed.

(b) The small town management zone is established in the area bounded on the north by the north boundary of sections 13 and 14, Township 29 North, Range 20 West in North Hudson and on the south by the corporate limit between the city of Hudson and village of North Hudson, as it existed on June 1, 2004.

(3) SMALL TOWN HISTORIC. (a) The small town historic management zone contains mostly single-family residences and is primarily historic in character. While some residences are newer and there are some commercial buildings that are historic in character, the predominant character of this district is of a late 19th or early 20th century residential area. A combination of man-made features, residential lawns and natural features will be found in this management zone.

(b) The small town historic management zone is established in both of the following locations:

1. Within the city limits of St. Croix Falls as they existed on January 1, 1976.

2. Within the village limits of Osceola as they existed on January 1, 1976.

(4) RURAL RESIDENTIAL. (a) The rural residential management zone is mostly single-family residential on large lots in a low-density rural environment, with little or no commercial development. Most of the district is wooded, with scattered residential structures. Residential lawns are limited near the river's shore, and the shore area is primarily natural in appearance.

(b) The rural residential management zone is established in all of the following locations:

1. In an area bounded on the north by the Arcola High Bridge and on the south by the north boundary of sections 13 and 14, Township 29 North, Range 20 West in North Hudson.

2. In an area bounded on the north by the south corporate limit of the city of Hudson, as it existed on June 1, 2004, to the north boundary of Kinnickinnic state park.

3. In an area bounded on the north by the south boundary of Kinnickinnic state park and on the south by the north city limits of Prescott as they existed on January 1, 1976.

(5) CONSERVATION. (a) The conservation management zone is primarily natural and mostly wooded, with some single-family residential uses. Shoreline areas are natural and do not contain residential lawns.



(b) The conservation management zone is established in both of the following locations:

1. In an area bounded on the north by the south boundary of Wisconsin Interstate state park and on the south by the north village limits of Osceola as they existed on January 1, 1976.
2. In an area bounded on the north by the south village limits of Osceola as they existed on January 1, 1976, and on the south by the Arcola High Bridge.

SECTION 6. NR 118.05 is repealed and recreated to read:

**NR 118.05 Land uses and structures in the Lower St. Croix river district. (1) PERMITTED USES AND STRUCTURES** (a) *All management zones.* 1. 'Permitted uses.' The following uses are allowed in all management zones if the standards in s. NR 118.06 are met:

- a. Single-family residential and accessory uses.
- b. Conservancy.
- c. Forestry.
- d. Agriculture.
- e. Public parks, areas devoted to natural resource management and interpretation, waysides, rest areas, information areas and scenic overlooks.
- f. Filling and grading outside of slope preservation zones

2. 'Permitted structures.' The following structures are allowed in all management zones if the standards in s. NR 118.06 are met:

- a. Single-family residences and accessory structures.
- b. Piers or wharves that have required state and federal permits or that meet statutory criteria or administrative rule standards and do not require a state or federal permit.
- c. Signs.
- d. Structural erosion control measures constructed outside of slope preservation zones. Rock rip-rap may be allowed within a slope preservation zone and in the ordinary high water mark setback area if the local zoning authority determines that rip-rap is necessary to prevent erosion in flood-prone areas, and either a state permit is granted for the rip-rap or statutory criteria or administrative rule standards are met and a state permit is not required for the rip-rap.

(b) *River town management zone.* In the river town management zone, other uses and structures that are allowed by the local unit of government's underlying zoning ordinance may be allowed as permitted uses and structures provided that the permitted uses and structures are listed in the local zoning ordinance with standards for those uses and structures that satisfy all of the following criteria:

1. Protect the natural and scenic qualities of the Lower St. Croix riverway.
2. Protect public health and safety.
3. Prevent erosion and water pollution.

(2) **CONDITIONAL USES.** (a) *All management zones.* The following uses and structures are conditionally permitted uses in all management zones. Conditional use permits for these uses and structures shall comply with the applicable requirements in ss. NR 118.06 and 118.07.

1. Land divisions.
2. Planned cluster developments for single-family residences.
3. Transmission services.
4. Wireless communication service facilities.
5. Filling and grading within slope preservation zones.
6. Structural erosion control measures constructed in slope preservation zones.
7. Stairways.
8. Lifts.
9. Public roads and private roads serving 2 or more properties or single-family residences.
10. Bed and breakfast operations.
11. Home occupations.
12. Nature-oriented educational, non-profit facilities.

(b) *River town, small town and small town historic management zones.* In the river town management zone, small town management zone and small town historic management zone, other uses and structures that are listed as conditional uses or special exceptions in the local unit of government's underlying zoning ordinance may be allowed as conditional uses provided that they are listed in the local unit of government's riverway ordinance with standards for those conditional uses that satisfy all of the following criteria:

1. Protect the natural and scenic qualities of the Lower St. Croix riverway.
2. Protect public health and safety.
3. Prevent erosion and water pollution.

(3) **PROHIBITED USES.** All uses and structures not listed as permitted or conditional shall be prohibited.

SECTION 7. NR 118.06 is repealed and recreated to read:

**NR 118.06 General provisions.** (1) **DIMENSIONAL AND OTHER STANDARDS.** (a) *Minimum lot size.* The minimum lot size for parcels that are allowed to be used as building sites in each management zone shall be as follows:

1. In the river town, small town and small town historic management zones, the minimum lot size shall be established in the local riverway ordinance.
2. In the rural residential and conservation management zones, the minimum lot size shall meet the following standards:

a. The minimum lot size shall have at least one acre of net project area.

b. If the lot is not served by a public sewage system or community sewage collection and treatment services, the lot shall have adequate room for one single-family residence and 2 private on-site wastewater treatment systems.

(b) *Density standard.* In the rural residential and conservation management zones, there may not be more than one single-family residence on each lot.

(c) *Minimum lot width.* The minimum lot width shall apply at the building line and at the side of the lot nearest the river. The minimum lot width for each management zone shall be as follows:

1. In the river town and small town management zones, the minimum lot width shall be established by local ordinance.

2. In the small town historic management zone, the minimum lot width shall be 100 feet.

3. In the rural residential management zone, the minimum lot width shall be 200 feet.

4. In the conservation management zone, the minimum lot width shall be 250 feet.

(d) *Maximum structure height.* The maximum structure height shall be measured between the average ground elevation and the uppermost point of the structure excluding chimneys. The maximum structure height for each management zone shall be as follows:

1. In the river town management zone, the maximum structure height shall be 45 feet except for wireless communication service facilities which meet the requirements of s. NR 118.07 (4)(c) and (d).

2. In the small town, small town historic and rural residential management zones, the maximum structure height shall be 35 feet except for wireless communication service facilities in the rural residential management zone which meet the height requirements of s. NR 118.07 (4)(c), (d) and (e).

3. In the conservation management zone, the maximum structure height shall be 25 feet except for wireless communication service facilities which are subject to the height requirement of s. NR 118.07 (4)(c) and (e).

(e) *Ordinary high water mark setback.* Except as provided in par. (g), the ordinary high-water mark setback shall be measured on a horizontal plane from the point of the structure that is nearest the ordinary high water mark, including roof overhangs and any cantilevered portions of the structure. The ordinary high water mark setback for each management zone shall be as follows:

1. In the river town, small town and small town historic management zones, all structures, except piers, wharves, structural erosion control measures, stairways and lifts, shall be set back at least 100 feet from the ordinary high water mark.

2. In the rural residential and conservation management zones, all structures, except piers, wharves, structural erosion control measures, stairways and lifts, shall be set back at least 200 feet from the ordinary high water mark.

(f) *Bluffline setback.* Except as provided in par. (g), the bluffline setback shall be measured on a horizontal plane from the point of the structure that is nearest the bluffline, including roof overhangs and any cantilevered portions of the structure. The bluffline setback for each management zone shall be as follows:

1. In the river town, small town and small town historic management zones, all structures except piers, wharves, structural erosion control measures, stairways and lifts, shall be set back at least 40 feet from the bluffline.

2. In the rural residential management zone, all structures, except piers, wharves, structural erosion control measures, stairways and lifts, shall be set back at least 100 feet from the bluffline or meet the performance standards outlined in subd. 4.

3. In the conservation management zone, all structures, except piers, wharves, structural erosion control measures, stairways and lifts, shall be setback at least 200 feet from the bluffline or meet the performance standards outlined in subd. 4.

4. In the rural residential management zone and conservation management zone, structures that do not meet the requirements of subd. 2. or 3. may be permitted within the bluffline setback area if they are set back at least 40 feet from the bluffline and meet all of the following performance standards:

a. The structure does not protrude above the bluffline as viewed from at or near the mid-line of the river or from 250 feet riverward from the shoreline, whichever is less.

b. The structure is not located within a slope preservation zone.

c. The structure utilizes earth-tone building materials that are of a non-reflective nature, except that windows may be made of ordinary window glass or non-reflective glass, but may not be made of glass designed to reflect more light than ordinary window glass.

d. The structure is visually inconspicuous.

(g) If, prior to the effective date of this rule ... [revisor insert date], a local unit of government has measured the ordinary high water mark setback or bluffline setback, or both, under its Lower St. Croix riverway ordinance to the nearest point of the foundation of a structure instead of measuring to roof overhangs, the local unit of government may continue to measure the ordinary high water mark setback and bluffline setback on a horizontal plane from the foundation of the structure at the point nearest to the ordinary high water mark or bluffline. The local unit of government shall measure the ordinary high water mark setback and the bluffline setback on a horizontal plane from the point of any cantilevered portions of the structure that is nearest the ordinary high water mark or bluffline. For new structures constructed after [ Revisor insert effective date ], if the local unit of government continues to measure the ordinary high water mark or bluffline setback, or both, from the nearest point of the foundation of a structure instead of from roof overhangs, the local unit of government shall limit roof overhang width to no more than 3 feet. The local unit of government shall also require any cantilevered portion of the structure other than roof overhangs to be set back from the ordinary high water mark as required in par. (e) and to be set back from the bluffline as required in par. (f).

(2) STRUCTURE COLOR STANDARDS. The following structure color standards shall apply:

(a) In all management zones, structures designated as historic buildings or located in designated historic districts shall be either earth-tone colored or colored appropriate to the period in history for which they were designated.

(b) Except as provided in par. (a), in the river town management zone, structure color requirements shall be determined by local zoning ordinance.

(c) Except as provided in par. (a), in the small town, small town historic, rural residential and conservation management zones, all new, expanded or reconstructed structures shall be earth-tone colored.

(3) SIGN STANDARDS. Signs are allowed in all management zones if on or more of the following criteria are met:

(a) The sign is approved by state or local government and is necessary for public health or safety.

(b) The sign indicates areas that are available or not available for public use.

(c) The sign is not visible from the river and is otherwise lawful.

(4) STRUCTURAL EROSION CONTROL MEASURES. Except for rock rip-rap that is allowed in compliance with the requirements in s. NR 118.05 (1)(a) 2. d., structural erosion control measures may only be placed above the ordinary high water mark and within the ordinary high water mark setback area and bluffline setback area if all of the following criteria are met:

(a) The structural erosion control measure is constructed outside of slope preservation zones, or a conditional use permit has been issued in compliance with the requirements of s. NR 118.07 (6).

(b) The local zoning authority determines that structural erosion control measures are necessary to address significant on-going erosion that nonstructural erosion control measures cannot control.

(c) The structural erosion control measure is constructed of natural materials and is made as visually inconspicuous as possible.

(d) The person seeking to construct the structural erosion control measure submits a detailed construction plan, an erosion control plan and a vegetative management plan, showing how the structural erosion control measure will be constructed, what land disturbing activities will take place, what, if any, vegetation will be removed, and how new, native vegetation will be re-established. Construction may not proceed until the local zoning authority has approved the plans.

(5) SLOPE PRESERVATION ZONE STANDARDS. No structures, except piers, wharves, structural erosion control measures, stairways and lifts, may be placed in slope preservation zones. Slopes greater than 12% may not be altered to become less than 12%.

(6) VEGETATION MANAGEMENT. (a) *Goals*. All of the following goals apply to all management zones:

1. The primary goals of these vegetative management provisions are to screen structures to make them visually inconspicuous and to prevent disturbance of environmentally sensitive areas such as steep slopes, shorelines and blufftop areas.

2. A secondary goal is to maintain and restore historically and ecologically significant plant communities and enhance diversity.

3. Successional climax forest and pre-settlement disturbed oak savanna will be the preferred forest ecotype examples of significant plant communities.

4. Vegetative screening of structures will take priority over restoration and maintenance of significant plant communities.

(b) *Standards*. 1. 'Vegetation management standards in all management zones.' In all management zones, all of the following vegetation management standards shall apply:

a. Vegetation in ordinary high water mark setback areas, slope preservation zones and 40 feet landward of blufflines shall be left undisturbed, except as provided elsewhere in this subsection or in s. NR 118.07 (3), (4) or (9).

b. Vegetation may not be disturbed or removed if it would disrupt the visually inconspicuous character of structures, reduce the quality or diversity of the plant community, or increase the potential for erosion, except as provided elsewhere in this subsection or in s. NR 118.07 (3), (4) or (9).

c. Routine pruning of trees or shrubs to improve their health and vigor, pruning to provide a filtered view of the river, pruning to prevent property damage, or removing trees that pose an imminent safety hazard to persons or structures is allowed.

d. Lawns within the ordinary high water mark setbacks areas, slope preservation zones, bluffline setback areas and within conservation management zones may not be expanded. However, mowing of existing lawns may be continued.

e. These standards do not prohibit the growth and harvest of non-wood-fiber crops, the removal of vegetation in order to allow permitted uses or structures or conditional uses, the removal of state-designated noxious weeds, and the pruning or removal of vegetation to prevent insect infestation or disease that threaten large areas of vegetative cover.

Note: Noxious weeds include those species designated by s. 66.96(2), Stats., which includes Canada thistle, leafy spurge and field bindweed, and any other such weeds as the governing body of any municipality or the county board of any county by ordinance or resolution declares to be noxious within its respective boundaries.

2. 'Additional vegetation management standards in river town, small town and small town historic management zones.' In addition to the vegetation management standards found in subd. 1., the following vegetation management standards also apply in river town, small town and small town historic management zones: If there are fewer than 25 trees over 5 inches in diameter on the lot between the building line and the river, the existing number of trees over 5 inches in diameter shall be maintained, and any trees that are removed as allowed in subd. 1. shall be replaced by trees that are at least one inch in circumference at the base.

3. 'Additional vegetation management standards in the rural residential and conservation management zones.' In addition to the standards found in subd. 1., all of the following standards also apply in the rural residential and conservation management zones:

a. Herbicide use shall be limited to direct topical application to cut stems to kill noxious weeds, exotic species, poison ivy, poison oak or poison sumac, or as a prescribed treatment within a forest stewardship plan.

b. The practice of forestry shall be allowed on lands for which a forest stewardship plan has been developed under ch. 77, Stats., or ch. NR 46 or 47, and on lands managed under forest stewardship plans that employ best management practices for water quality protection, erosion control and generally accepted forest management guidelines and have been approved by a department forester. Forest stewardship plans prepared under this section shall be implemented to employ commonly accepted silvicultural practices approved by a department forester, to ensure that silvicultural practices are compatible with the riverway goals of protecting natural scenic values and ensuring that structures will remain visually inconspicuous. Cutting, harvesting or removal of timber under this provision on land that is visible from the river during the time when the leaves are on the deciduous trees may only include the following practices: small regeneration cuts with boundaries designed to harmonize with naturally occurring shapes; shelterwood cuts not to exceed the size, shape, spacing or timing of regeneration cuts; or selection cutting leaving a residual timber stand of at least 60 square feet basal area.

Note: Generally accepted forest management guidelines, which include guidelines for forest aesthetics, are described in a WDNR publication titled Wisconsin Forest Management Guidelines, PUB-FR-226 2003 available from the WDNR Forestry Division, PO Box 7921, Madison, Wisconsin 53707-7921 or on the Wisconsin DNR web site at <http://www.dnr.state.wi.us/org/land/forestry/Publications/Guidelines/index.htm>.

c. Noxious weeds, exotic species, poison ivy, poison oak, poison sumac or any other vegetation that is removed shall be replaced with native vegetation.

4. 'Penalties.' In addition to any other penalties assessed by local authorities, the penalty for removing vegetation in violation of a local zoning ordinance implementing these rules shall include replacement of vegetation with native vegetation at the property owner's expense.

(7) PRIVATE ON-SITE WASTEWATER TREATMENT SYSTEMS. Private on-site wastewater treatment systems shall be constructed in accordance with the requirements of ch. Comm 83.

(8) HISTORIC PRESERVATION. In the river town and small town historic management zones, the local unit of government shall adopt and enforce historic preservation ordinances and historic theme architectural standards for new or reconstructed development that will protect the historic character of their communities. Local units of government may establish a historic preservation commission or landmarks commission to review proposals affected by the ordinance. The ordinance shall define historic properties in the community and provide for review of proposals to alter, relocate, demolish or reconstruct historic properties as well as providing for review of any new development that may impact historic properties or impact the community's historic character.

(9) FILLING AND GRADING. Filling and grading may be permitted outside slope preservation zones if all of the following requirements are met:

- a. Filling and grading activities are set back at least 40 feet from slope preservation zones.
- b. Filling and grading activities do not disturb more than 10,000 square feet of land.
- c. No wetlands are filled or drained.
- d. Any vegetation that is removed is replaced with native vegetation.
- e. Filling and grading activities are designed and implemented in a manner to minimize erosion, sedimentation, and impairment of fish and wildlife habitat.
- f. As part of an erosion control plan, Wisconsin construction site best management practices are implemented.

Note: Approved best management practices for construction site erosion control can be found in *Wisconsin's Construction Site Best Management Practice Handbook* (WDNR Pub. WR-222 November 1993 Revision) which is available from the Wisconsin Department of Administration, Document Sales, 202 S. Thornton Ave., Madison, WI 53707.

SECTION 8. NR 118.07 is repealed and recreated to read:

**NR 118.07 Conditional use standards.** The conditional uses and structures listed in s. NR 118.05 (2) may be permitted if the requirements in s. NR 118.06 and the following standards are met:

(1) LAND DIVISIONS. A conditional use permit may be granted to divide property into lots if all of the following conditions are met:

(a) All lots proposed to be built on shall meet the minimum lot size requirements in s. NR 118.06 (1)(a) and (c), and shall be suitable for residential development in their existing condition without the need for a variance.

(b) All lots are suitable for their proposed use and will not be subject to the potential for flooding, inadequate drainage, severe erosion, inadequate water supply or inadequate sewage disposal capabilities.

(c) Use of the lots will not be limited by unfavorable soil and rock formations, unfavorable topography, or any other feature which is likely to result in harm to the health, safety or welfare of future residents of the lots or of the local community.

(d) The local zoning authority shall consult with the state historical society concerning potential impacts to archeological sites. If the property is found to contain an archeological site, the local unit of government and the applicant shall develop and implement a plan to avoid or mitigate impacts to the archeological site with the assistance from the state historical society.

(2) PLANNED CLUSTER DEVELOPMENTS. A conditional use permit may be issued for a planned cluster development for single-family residences if all of the following criteria are met:

(a) The proposed clustering provides a better means of preserving scenic views, open space and shoreline than a traditional single-family residential subdivision.

(b) The proposed structures comply with the minimum ordinary high water mark and bluffline setbacks and height standards in s. NR 118.06 (1).

(c) Exceptions to the standards in s. NR 118.06 (1)(a) and (c) may be allowed for planned cluster developments, provided that the total number of single-family residences may not exceed 50% more than the total number of single-family residences allowed if the development complied with all standards in s. NR 118.06(1)(a) and (c).

(d) On any lots that abut the river, all of the standards in s. NR 118.06 (1) shall be met.

(f) If lands are divided, the land division meets the requirements of sub. (1).

(3) TRANSMISSION SERVICES. A conditional use permit may be issued for the construction, updating, maintenance or reconstruction of transmission services if all of the following conditions are met:

(a) All new, updated or reconstructed transmission services shall be placed underground, if underground placement is determined to be technically feasible by the local unit of government. If an applicant seeks to establish that underground placement is technically infeasible, the application shall explain what factors make it infeasible.

(b) If underground placement is determined to be technically infeasible, overhead or above ground transmission services may be permitted, but shall be designed to minimize the adverse visual impact on the scenic character of the riverway.

(c) New, updated or reconstructed transmission services shall be constructed and maintained using minimally invasive techniques for construction and maintenance, including erosion control. Existing transmission facilities shall be maintained using minimally invasive techniques for maintenance, including erosion control.

(d) Cutting or clearing of vegetation for transmission service maintenance may be conducted; however, an understory layer of vegetation shall be maintained to prevent erosion and allow succession. Vegetation management shall protect the quality and diversity of the plant community and prevent erosion. Herbicide use shall be limited to direct topical application to cut stems to prevent regrowth. The pruning of normal tree growth for safety reasons or to prevent interference with the transmission service and removal of noxious weeds is allowed.



(4) WIRELESS COMMUNICATION SERVICE FACILITIES. A conditional use permit may be issued for the installation, reconstruction, modification and replacement of wireless communication service facilities if all of the following criteria are met:

(a) Construction and maintenance shall be conducted using techniques which minimize the cutting or pruning of vegetation in order to preserve mature vegetation and provide screening of the facilities. Erosion control measures shall be used.

(b) Wireless communication service facilities shall use building materials, colors, textures, screening and landscaping that blend the facilities in with surrounding natural features or nearby structures and shall be visually inconspicuous.

(c) Wireless communication service facilities shall be of camouflage or stealth design, unless placed on existing structures.

(d) In the river town, small town and small town historic management zones, the facilities shall be of a height designed to blend in with the historic character of the community.

(e) Wireless communication service facilities in the rural residential or conservation management zones may not exceed a height of 50 feet or not more than 20 feet above the tallest structure or tree canopy within a 300 foot radius of the proposed wireless communication service facilities as measured horizontally, whichever is higher.

(f) New or reconstructed wireless communication service facilities may not be placed in slope preservation zones, floodplains or wetlands.

(5) FILLING AND GRADING ACTIVITIES. (a) A conditional use permit may be issued for filling and grading activities in the following areas if the conditions in par. (b) are satisfied:

1. In slope preservation zones that do not directly face the river and do not drain directly to the river.

2. Outside of slope preservation zones when more than 10,000 square feet of land is proposed to be disturbed by filling or grading activity.

3. Within 40 feet of a slope preservation zone.

(b) A conditional use permit may be issued for filling and grading in the areas described in par. (a) if all of the following conditions are met:

1. Filling and grading activities do not disturb more than 10,000 square feet of land within a slope preservation zone.

2. No wetlands are filled or graded.

3. Any vegetation that is removed is replaced with native vegetation.

4. Filling and grading activities are designed and implemented in a manner to minimize erosion, sedimentation, and impairment of fish and wildlife habitat.

5. As part of an erosion control plan, Wisconsin construction site best management practices are implemented.

Note: Approved best management practices for construction site erosion control can be found in *Wisconsin's Construction Site Best Management Practice Handbook* (WDNR Pub. WR-222 November 1993)

Revision) which is available from the Wisconsin Department of Administration, Document Sales, 202 S. Thornton Ave., Madison, WI 53707.

(6) STRUCTURAL EROSION CONTROL MEASURES IN SLOPE PRESERVATION ZONES. A conditional use permit may be issued for the construction, updating, maintenance or reconstruction of structural erosion control measures in slope preservation zones if all of the following conditions are met:

(a) The local zoning authority determines that structural erosion control measures are necessary to address significant on-going erosion that nonstructural erosion control measures cannot control.

(b) The structural erosion control measure is constructed of natural materials and is made as visually inconspicuous as possible.

(c) The person seeking to construct the structural erosion control measure submits a detailed construction plan, an erosion control plan and a vegetative management plan, showing how the structural erosion control measure will be constructed, what land disturbing activities will take place, what, if any, vegetation will be removed, and how new native, vegetation will be re-established. Construction may not proceed until the local zoning authority has approved the plans.

(7) STAIRWAYS. A conditional use permit may be issued for a stairway if all of the following conditions are met:

(a) The stairway is required to provide pedestrian access to the river because of steep, rocky, unstable or wet site conditions.

(b) The tread width of the stairway may not exceed 48 inches.

(c) Landings are located at a vertical interval of not less than 20 feet and may not exceed 40 square feet in area.

(d) Hand rails may be permitted in conjunction with stairways.

(e) Canopies and roofs are not allowed on stairways.

(f) Stairways, handrails and landings shall be anchored and supported above grade with pilings or footings.

(g) Stairways shall be constructed of unfinished wood or stone, or shall be painted or stained with earth-tone materials.

(h) Stairways shall be visually inconspicuous and shall be located in the most visually inconspicuous portion of the lot.

(i) Native vegetation plantings shall be used to form a vegetative canopy to screen the stairway from the river.

(j) Existing vegetation may be removed within one foot of either side of the stairway route and up to 8 feet above the stairway floor.

(k) Only one stairway may be permitted on a lot that abuts the Lower St. Croix river.

(8) LIFT STANDARDS. A conditional use permit may be issued for a lift if all of the following requirements are met:

(a) The lift is required to provide pedestrian access to the river because of steep, rocky, unstable or wet site conditions.

(b) The car of the lift may not exceed 4 feet by 6 feet.

(c) Canopies and roofs are not allowed.

(d) All visible parts of the lift shall be painted or finished in earth-tone, non-reflective materials and shall be visually inconspicuous.

(e) Lifts and their transporting device or power source shall be visually inconspicuous and shall be located in the most visually inconspicuous portion of the lot.

(f) Native vegetation plantings shall be used to form a vegetative canopy to screen the lift from the river.

(g) Existing vegetation may be removed within one foot on either side of the lift route and up to 8 feet above the lift floor.

(h) Only one lift may be permitted on a lot that abuts the Lower St. Croix river.

(9) PUBLIC ROADS AND PRIVATE ROADS SERVING 2 OR MORE PROPERTIES OR SINGLE-FAMILY RESIDENCES. A conditional use permit may be issued for the construction, reconstruction or right-of-way maintenance for public roads and private roads serving 2 or more properties or single-family residences if all of the following conditions are met:

(a) No new road may be constructed in slope preservation zones, in an area 40 feet landward of blufflines, within 200 feet of the river, within 100 feet of tributary watercourses or in wetlands.

(b) Route design and construction or reconstruction shall minimize visual impacts by using terrain features to blend the road into the landscape, avoiding cuts and fills as much as feasible.

(c) New roads shall be visually inconspicuous. Reconstruction of existing roads shall be performed in a manner that does not increase visibility of the road from the river.

(d) Cutting or clearing vegetation for road right-of-way maintenance shall be conducted in accordance with the following requirements:

1. Vegetation shall be managed to allow an understory layer to remain in place to prevent erosion and allow succession. Vegetation may not be disturbed in such a way that there would be reduced quality or diversity of the plant community or increased potential for erosion.

2. Herbicide use shall be limited to direct topical application to cut stems to prevent regrowth. The pruning of normal tree growth for safety reasons or to prevent interference with infrastructure and the removal of noxious weeds is permitted.

3. Mowing of a safety zone from the edge of the pavement back 15 feet or to the ditch bottom, whichever is less, and clearing intersection vision triangles is allowed. Other parts of the right-of-way may be mowed to control noxious weeds and undesirable brush only after July 15 of each year to avoid impacts to ground-nesting birds.

4. Cutting of trees more than 4 inches in diameter breast height is prohibited, except that trees that pose a hazard to public health or safety may be removed.

(10) BED AND BREAKFAST OPERATIONS. A conditional use permit may be issued for a bed and breakfast operation if all of the following requirements are met:

(a) The bed and breakfast operation provides 4 or fewer rooms for rent to transient visitors.

(b) The bed and breakfast operation has sufficient parking spaces on their lot or on public roads for the guests.

(11) HOME OCCUPATIONS. A conditional use permit may be issued for the use of a single-family residence for a home occupation if all of the following requirements are met:

(a) The owner or person who rents the residence on a full-time basis conducts the home occupation.

(b) The home occupation is conducted inside of the residence and is subordinate to the use of the home as a principal residence.

(c) The home occupation will not cause environmental pollution.

(d) If the home occupation causes additional persons to visit the residence, sufficient parking is provided on the lot or on public streets.

(12) NATURE-ORIENTED EDUCATIONAL, NON-PROFIT FACILITIES. A conditional use permit may be issued for a nature-oriented educational, non-profit facility if all of the following requirements are met:

(a) The facility will not cause environmental pollution or erosion.

(b) The facility has sufficient parking on its property or on public streets for patrons to park.

SECTION 9. NR 118.08 is created to read:

**NR 118.08 Nonconforming uses and structures and substandard lots.** (1) NONCONFORMING USES. A nonconforming use may not be expanded or enlarged. An increase in the volume, intensity or frequency of use is allowed if the area used for the nonconforming use is not enlarged. A change from one nonconforming use to another nonconforming use is not allowed. If a nonconforming use is discontinued for a period of 12 months, any future use of the building and premises shall conform to all of the requirements of the local zoning ordinance.

(2) NONCONFORMING PRINCIPAL STRUCTURES. In all management zones, ordinary maintenance and repair of nonconforming principal structures is allowed. However, structural alteration, reconstruction and expansion of nonconforming principal structures and replacement, improvement or structural alteration of the foundation may only be allowed if all of the following requirements are met, where applicable:

(a) *Reconstruction of nonconforming principal structures.* Nonconforming principal structures located within the ordinary high water mark setback area, bluffline setback area or slope preservation zone may be structurally altered or reconstructed and foundations may be replaced, improved or structurally altered if all of the following requirements are met:

1. The lot has an area of at least 7,000 square feet.
2. The altered or reconstructed structure will be visually inconspicuous or will be rendered so through mitigation in accordance with sub. (5).
3. The structure is altered or reconstructed in the same footprint as the pre-existing structure.
4. The height of the altered or reconstructed structure complies with s. NR 118.06 (1)(d). The reconstructed structure may not be any taller than the pre-existing nonconforming structure, except that a flat roof may be replaced with a pitched roof.

5. The color of the structure complies with s. NR 118.06 (2).

6. The property owner submits a mitigation plan that complies with the requirements of sub. (5). If a permit is issued for the reconstruction, the mitigation plan shall be approved, or modified and approved, by the local zoning authority. The mitigation plan shall be incorporated into the permit and the property owner shall be required to implement the mitigation plan as a permit condition.

7. Private on-site wastewater treatment systems are brought into compliance with the requirements of ch. Comm 83.

8. The foundation of the structure may not be replaced, improved or structurally altered. Notwithstanding the definition of "reconstruction" in s. NR 118.03(36) and the preceding sentence, the foundation of the structure may be replaced, improved or structurally altered in conjunction with the reconstruction of the structure if the entire structure is more than 50 feet from the ordinary high water mark and is not located in a slope preservation zone.

9. An erosion control plan and revegetation plan shall be submitted to the local zoning authority for approval, or modification and approval, prior to the issuance of a permit for the structural alteration or reconstruction.

10. There will be no filling and grading activities conducted during the alteration or reconstruction, except for the minimum necessary to accomplish the alteration or reconstruction in compliance with other provisions of this chapter, and as needed to upgrade a private on-site wastewater treatment system, to replace sewer or water laterals, or to install storm water or erosion control measures.

11. If the nonconforming principal residence is located in a slope preservation zone, it may be reconstructed only if Wisconsin construction site best management practices applicable to steeper sloped areas are implemented to control erosion.

Note: Approved best management practices for construction site erosion control can be found in *Wisconsin's Construction Site Best Management Practice Handbook* (WDNR Pub. WR-222 November 1993 Revision) which is available from the Wisconsin Department of Administration, Document Sales, 202 S. Thornton Ave., Madison, WI 53707.

(b) *Expansion of nonconforming principal structures.* Nonconforming principal structures located in the ordinary high water mark setback area or bluffline setback area may be expanded and the pre-existing foundation may be replaced, repaired or structurally altered in conjunction with the expansion if all of the applicable following requirements are met:

1. Structures located wholly or partially within 50 feet of the ordinary high water mark may not be expanded.

2. Structures located wholly or partially within slope preservation zones may not be expanded.

3. Structures entirely set back more than 50 feet from the ordinary high water mark but located wholly or partially less than 75 feet from the ordinary high water mark may be expanded only if there is no compliant building location available on the lot.

4. Structures entirely set back more than 75 feet from the ordinary high water mark may be expanded regardless of whether a compliant building location exists elsewhere on the lot.

5. The lot has an area of at least 7,000 square feet.

6. The expanded structure will be visually inconspicuous or will be rendered so through mitigation.

7. Any reconstructed portion of the nonconforming structure may only be reconstructed in the same footprint as the pre-existing structure. Notwithstanding the definition of "reconstruction" in s. NR 118.03(36), the pre-existing foundation of a structure that is more than 50 feet from the ordinary high water mark and is not within a slope preservation zone may be replaced, repaired or structurally altered in conjunction with the expansion of the structure.

8. For structures located wholly or partially within the ordinary high water mark setback area, the total footprint of the structure may not exceed 1500 square feet.

9. For structures located wholly or partially within the bluffline setback, but not within the ordinary high water mark setback area, the total footprint of the structure may not exceed 2000 square feet and the structure shall comply with all of the requirements in s. NR 118.06 (1)(f) 4.

10. Expansion is on the side of the structure farthest from the river or, if landward expansion is not possible, the expansion is parallel to the ordinary high-water mark or bluffline.

11. The height of the structure complies with s. NR 118.06 (1)(d).

12. The color of the structure complies with s. NR 118.06 (2).

13. The property owner submits a mitigation plan that complies with the requirements of sub. (5). If a permit is issued after a mitigation plan is approved, or modified and approved, by the local zoning authority, the mitigation plan shall be incorporated into the permit and the property owner shall be required to implement the mitigation plan as a permit condition.

14. Private on-site wastewater treatment systems are brought into compliance with the requirements of ch. Comm 83.

15. An erosion control plan and revegetation plan shall be submitted to the local zoning authority for approval, or modification and approval, prior to the issuance of a permit for the expansion.

16. There will be no filling or grading conducted as part of the reconstruction or expansion except as necessary to reconstruct or build the expansion in compliance with other provisions of this chapter, upgrade a private on-site wastewater treatment system, replace sewer or water laterals, or install storm water or erosion control measures.

(3) NONCONFORMING ACCESSORY STRUCTURES. In all management zones, ordinary maintenance and repair of nonconforming accessory structures is allowed. Nonconforming accessory structures may not be structurally altered, reconstructed or expanded, except that garages and storage sheds may be structurally altered, reconstructed or expanded if all of the following requirements are met where applicable:

(a) The entire garage or storage shed is not located in a slope preservation zone.

(b) The entire garage or storage shed is set back more than 75 feet from the ordinary high water mark.

(c) The garage or storage shed is not used for human habitation.

(d) The total footprint of all nonconforming accessory structures, other than existing driveways, within 75 feet of the ordinary high water mark, within a slope preservation zone or within the bluffline setback area may not exceed 500 square feet.

(e) The garage or storage shed is built with earth-tone building materials that are non-reflective, except that windows may be made of ordinary window glass or non-reflective glass, but may not be made of glass designed to reflect more light than ordinary window glass.

(f) Mitigation measures are implemented and maintained that comply with the requirements of sub. (5).

(g) The structure is visually inconspicuous or will be rendered so through a mitigation plan that complies with sub. (5).

(4) SUBSTANDARD LOTS. Lots of record in the register of deeds office on January 1, 1976, or on the date of the adoption of an amendment to a riverway ordinance that makes a lot substandard, which do not meet the requirements of this chapter, may be allowed as building sites provided that the following criteria are met:

(a) 1. The lot is in separate ownership from abutting lands, or

2. The lot by itself or in combination with an adjacent lot or lots under common ownership in an existing subdivision has at least one acre of net project area. Adjacent substandard lots in common ownership may only be sold or developed as separate lots if each of the lots has at least one acre of net project area.

(b) All structures that are proposed to be constructed or placed on the lot and the proposed use of the lot comply with the requirements of the local unit of government's Lower St. Croix riverway ordinance and any underlying zoning or sanitary code requirements.

(5) MITIGATION REQUIREMENTS. Expansion or reconstruction of nonconforming principal structures, and the expansion, reconstruction or structural alteration of nonconforming accessory structures shall trigger mitigation requirements to offset the impacts of the proposed project. Mitigation measures shall be roughly proportional to the magnitude of the impacts of the proposed project on scenic resources, water quality, erosion potential and the protection of the shoreland area. Mitigation shall include, but may not be limited to, the following:

(a) Planting trees capable of screening the entire structure, if existing vegetation is not sufficient to render the structure visually inconspicuous. The trees shall be native to the area, at least 2 inches diameter breast height and planted no more than 12 feet apart.

(b) The vegetation in the area within 50 feet of the ordinary high water mark shall be preserved or restored through planting of native vegetation. Vegetation shall be established or maintained at densities that are adequate to protect water quality, habitat and natural scenic beauty of the shoreland area. If a nonconforming structure is located in this area, the vegetation shall be planted surrounding the structure, although the owner may create a screened view of the river from the structure and may leave a 15-foot wide mowed area around the structure to protect it from wildfire.

(c) Best management practices shall be followed to encourage stormwater infiltration and to limit erosion and runoff.

Note: Approved best management practices for construction site erosion control can be found in *Wisconsin's Construction Site Best Management Practice Handbook* (WDNR Pub. WR-222 November 1993 Revision) which is available from the Wisconsin Department of Administration, Document Sales, 202 S. Thornton Ave., Madison, WI 53707.

(d) An affidavit describing the approved mitigation plan shall be executed and recorded with the county register of deeds by the property owner within 14 days after approval of the mitigation plan. The affidavit shall alert subsequent purchasers of the land of the requirements of the mitigation plan.

SECTION 10. NR 118.09 is created to read:

**NR 118.09 Administrative provisions.** (1) ADOPTION AND REVIEW OF ORDINANCES. (a) Ordinances implementing the provisions of this chapter shall be adopted by counties, cities, villages and towns located in the Lower St. Croix national scenic riverway within 30 days after the effective date of this rule ... [revisor insert date], as required by s. 30.27 (3), Stats., except that a town is not required to adopt an ordinance under this chapter if the county in which the town is located has adopted a local zoning ordinance that applies to the town.

(b) Upon adoption of an ordinance, or ordinance amendment, implementing these rules, the local unit of government shall submit 2 copies of the ordinance or amendment to the department. The department shall review the ordinance or amendment and determine whether it satisfies the requirements of this chapter. The department shall notify the local unit of government of its determination.

(2) CONDITIONAL USE, VARIANCE PROCEDURES, AND ZONING MAP AND TEXT AMENDMENTS. (a) *Public hearing required.* A public hearing shall be held before any conditional use permit, any variance, or any zoning map or text amendment is approved or denied by the appropriate local zoning authority. In addition to any other notice requirements, notice of all public hearings and a copy of all application materials submitted under par. (b) shall be provided to the department, the county, city, or village planning department, the regional planning commission and the town board of the town within which the affected parcel of land is located, at least 30 days before the public hearing.

(b) *Conditional use and variance application requirements.* 1. Conditional use and variance applications shall supply pertinent information adequate for the appropriate local zoning authority to make a decision based on the type of project to be undertaken. The applicant shall submit to the appropriate local zoning authority sufficient copies of the following information for all applications:

a. A scale drawing or survey showing the property location, boundaries, dimensions, elevations, blufflines, slope preservation zones, utility and roadway corridors, ordinary high water mark, ordinary high water mark setback, floodway and flood fringe boundaries, and adjoining land and water-oriented uses.

b. A recent aerial photo with property lines drawn in, showing the location of existing and proposed structures, including height and setback dimensions.

c. The location of existing and proposed alterations of vegetation and topography, including any vegetation removal and replacement that is proposed.

d. A mitigation plan, if required.

e. Photos of the site taken from the river slightly upstream and down stream of the property, and directly offshore.

f. An erosion control plan.

g. A vegetative management plan, showing where vegetation is proposed to be removed and replaced.

h. Other information that the local zoning authority or the department requests. If the local zoning authority or the department requests additional information, it shall be submitted by the applicant to the local zoning authority and the department prior to any hearing on the application.

2. Applications for land divisions, planned cluster developments, bed and breakfast operations, home occupations, nature oriented educational, non-profit facilities and variances shall also include:

a. The location of any proposed private on-site wastewater treatment system.



b. Water supply information, including the location of any proposed wells.

3. Applications for filling and grading, structural erosion control structures, and road construction shall also include a plan showing the proposed construction, reconstruction, location and design of the filling grading, structural erosion control measure or road construction.

4. Applications for transmission services and wireless communication service facilities shall also include:

a. For transmission services a plan showing the location of proposed facilities, and if not placed underground, a documentation of why this is technically infeasible, and a plan outlining design and construction methods to minimize adverse visual impacts to the riverway.

b. For wireless communication service facilities, a plan showing the location of proposed facilities and an illustration of the methods to be used to meet design requirements for the appropriate, stealth, camouflage, and height requirements.

5. Applications for stairways and lifts shall also include a plan showing the stairway or lift location, design, dimensions, color, construction materials, erosion control measures and vegetative removal and replacement. The plan shall contain a certification by a registered professional engineer or architect that the stairway or lift components are securely anchored to prevent them from shifting and from causing erosion. The plan shall be approved, or modified and approved by the local unit of government and incorporated into the conditional use permit.

(c) *Map and text amendment procedures.* 1. A public hearing shall be held before any zoning map or text amendment is approved or denied by the appropriate local zoning authority. In addition to any other notice requirements, notice of all public hearings and a copy of all application materials submitted shall be provided to the department, county, city or village planning department, the regional planning commission and the town board of the town within which the affected parcel of land is located, at least 30 days prior to the public hearing. Applications for map and text amendments shall include:

a. A scale drawing or survey showing the property location, boundaries, dimensions, elevations, blufflines, slope preservation zones, utility and roadway corridors, ordinary high water mark, floodway, flood fringe, and adjoining land and water-oriented uses.

b. Photos of the site taken from the river slightly upstream and down stream of the property, and directly offshore.

c. Other information that the local zoning authority or the department requests. If the local zoning authority or the department requests additional information, it shall be submitted by the applicant to the local zoning authority and the department prior to any hearing on the application.

2. The procedures and application requirements in this paragraph do not apply to proposals to change the management zone boundaries established in s. NR 118.04. The management zone boundaries in s. NR 118.04 may only be changed by revision of s. NR 118.04.

(d) *Public hearing and decision record.* The public hearing record shall contain the comments of the department, if any were submitted, and the comments of any other interested parties. The local zoning authority's record of decision shall address the following: preservation of the scenic and recreational resources of the riverway, especially in regard to the view from and use of the river; the maintenance of safe and healthful conditions; the prevention of and control of water pollution, including sedimentation; the location of the site with respect to floodways, floodplains, slope preservation zones and blufflines; the erosion potential of the site based on degree and direction of slope, soil type and vegetative cover; potential impact on terrestrial and aquatic habitat; location of the site with respect to existing or future access roads; adequacy of proposed wastewater treatment; and compatibility with

adjacent land uses. Any plan submitted with an application shall be approved, or modified and approved, and included as part of the permit application. The local zoning authority shall send a copy of each decision, including a summary of the hearing, to the department, within 5 working days after the date of the hearing.

(3) REASONABLE ACCOMODATIONS FOR DISABLED PERSONS. Each ordinance adopted to implement this chapter shall contain a description of the procedure that is to be followed to process applications from persons who claim to be disabled and who are requesting that they be allowed to take action because of their disability that would otherwise be prohibited under the zoning ordinance. In order to allow a disabled person who is entitled to reasonable accommodations under the Americans with Disabilities Act, the federal Fair Housing Act or the Wisconsin Open Housing Law to take action that would otherwise violate the requirements of a Lower St. Croix river district zoning ordinance, the local zoning authority shall issue an administrative permit to the disabled person. Local zoning authorities may not issue variances to disabled persons unless the statutory variance criteria in s. 59.694 (7)(c), Stats., or s. 62.23 (7)(e)7., Stats., are satisfied.

Note: The Americans with Disabilities Act ("ADA"), 42 USC 12101 to 12213; requires states and local units of government to take action to avoid discriminating against disabled persons in their employment practices, in public accommodations and in all programs, activities and services provided by the governmental entity. The federal Fair Housing Act, 42 USC 3601 to 3631, and the Wisconsin Open Housing Law, s. 106.50, Stats., require local governments to make "reasonable accommodations" in the application of zoning ordinances in order to provide equal opportunity to housing to disabled persons. However, the issuance of a variance is not the appropriate mechanism for granting "reasonable accommodations" that are required because of a person's disabilities because, under Wisconsin law, variances can only be granted based on the unique characteristics of the property.

(4) PERMIT PROCEDURES. (a) *Permit procedures for all permitted and conditional uses.* In order to facilitate the orderly and efficient administration and enforcement of Lower St. Croix riverway ordinances, local units of government located within the Lower St. Croix riverway shall establish permit procedures for the processing of permit applications for all permitted uses that involve the construction, reconstruction, expansion or structural alteration of a building or other structure or other land development. Local units of government located in the river town, small town, and small town historic management zones shall list in their riverway ordinances specific conditional uses and the standards that are to be satisfied before a conditional use permit may be granted in accordance with s. NR 118.05 (2) (b), and shall establish procedures in their riverway ordinances for the processing of applications for conditional use permits. In addition to the decisions required to be submitted to the department under sub. (2)(d), local units of government shall submit to the department copies of permits that have been issued under a lower St. Croix Riverway ordinance if requested to do so by the department.

(b) *Permit procedures for variances.* The appropriate local zoning authority may grant variances from the requirements of their local zoning ordinance, pursuant to s. 59.694 (7)(c) or 62.23 (7)(e)7., Stats., that will not be contrary to the public interest and where, due to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, so that the spirit of the ordinance shall be observed and substantial justice done. Economic considerations alone may not constitute a hardship if a reasonable use for the property exists under the conditions allowed by the local zoning ordinance. Conditions may be imposed in the granting of variances to ensure compliance and to protect adjacent properties and the public interest, especially in regard to the view from the river.

(5) REVIEW OF APPEALS. (a) All applications for conditional use permits, zoning map or text amendments and variances shall be reviewed by the department and the department's comments shall be submitted to the appropriate local zoning authority for inclusion in the hearing record.

(b) Where additional information is introduced at the hearing by the applicant or where the applicant may wish to review the department's or town's opposition, the hearing record may be held open for review of the information. If, at the end of 30 days after the date of the hearing, the appropriate local zoning authority has not scheduled a second hearing on the application at the request of the applicant, the department or the town, the hearing record shall be closed. A conditional use permit may not be granted if the town board objects to the issuance.

(c) The department shall assist local zoning authorities in implementing and enforcing ordinances adopted pursuant to this chapter.

(6) PENALTIES. In order to facilitate the orderly and efficient administration and enforcement of Lower St. Croix riverway ordinances, local units of government located within the Lower St. Croix river district shall establish penalties for violations of the requirements of the ordinance, including appropriate forfeitures. Each day that a violation continues is considered a separate offense. Compliance with the ordinance shall be enforceable by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.

SECTION 11. EFFECTIVE DATE. This rule 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.

SECTION 12. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on May 26, 2004 and August 11, 2004.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
Scott Hassett, Secretary

(SEAL)