

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

The Wisconsin Natural Resources Board proposes an order to amend NR 118.04(1)(b)(intro.) and (3)(b)1. and 2.; and to create NR 118.04(1)(b)3. and 4, relating to management zone designations in the Lower St. Croix National Scenic Riverway.

WT-35-05

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 as allowing the Department the authority 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.

This proposed amendment to ch. NR 118 is intended to allow the Village of Osceola and the City of St. Croix Falls the flexibility to allow businesses as a permitted use rather than a conditional use. This requires modifying the rule to change the management zone designation for a portion of each of these municipalities from Small Town Historic Management Zone to River Town Management Zone. The remainder of these municipalities will remain in the Small Town Historic Management Zone. No other communities within the riverway are affected by this change.

This proposed change follows the intent of the rule in providing flexibility while still protecting the natural and scenic character of the riverway. Other provisions of the rule maintain protection for the riverway.

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 enabling legislation for the riverway specifies that the National Park Service has primary management responsibility north of Stillwater and that the states will be the primary managers from Stillwater south. 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 National Park Service and the states all have management responsibility over water surface use north of Stillwater.

This proposed change follows the intent of the CMP and does not change federal regulatory authority.

State Regulatory Analysis: The designation of the Lower St. Croix as a National Scenic Riverway requires this section of river receive greater protection than other waters in the state to maintain the natural scenic beauty of this waterway. Ch. 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.

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 similarly 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.

This proposed change maintains riverway protection while providing more flexibility for local governments.

A Summary of Factual Data: Chapter NR 118 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 socioeconomic 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 of 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 revisions to s. NR 118.04 have 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.

The proposed change further clarifies the intent of the rule and follows the standards of providing flexibility while protecting and improving the riverway.

Effect on Small Businesses: No significant impact is expected on small business. The proposed change will simplify the process for review of permits for business expansion or modification within these business districts proposed to be changed to River Town management zone.

Contact:

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SECTION 1. NR 118.04(1)(b)(intro.) is amended to read:

NR 118.04(1)(b)(intro.) The river town management zone is established in the following locations:

SECTION 2. NR 118.04(1)(b)3. and 4. are created to read:

NR 118.04(1)(b)3. That portion of the village of Osceola zoned as B-1 in the village zoning ordinance in effect on the effective date of these rules...[revisor insert date] located west of the centerline of STH 35 and north of the Wisconsin Central Railroad tracks and identified as blocks #13, #15 and #17 of the original plat of the Village, lots #7 to 11 in block 10 of the original plat of the Village, outlots #119, #120, #124, #125 and #126, and parcel #165-529.

4. That portion of the city of St. Croix Falls located south of the intersection of River Street and Washington Street, and north of a line parallel to the boundary of Interstate State Park, bounded on the west by the centerline of River Street, and on the east by the centerline of Washington Street.

SECTION 3. NR 118.04(3)(b)1. and 2. are amended to read:

NR 118.04(3)(b)1. Within the city limits of St. Croix Falls as they existed on January 1, 1976, with the exception of that portion of the city designated as river town as described in sub. (1)(b)4.

2. Within the village limits of Osceola as they existed on January 1, 1976, with the exception of that portion of the village designated as river town as described in sub. (1) (b) 3.

SECTION 4.. EFFECTIVE DATE. The rule shall take effect the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

SECTION 5. BOARD ADOPTION. The rule was approved and adopted by the State of Wisconsin Natural Resources Board on March 22, 2006.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Scott Hassett, Secretary

(SEAL)