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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 02-122

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 2002.]**

#### 2. Form, Style and Placement in Administrative Code

a. Section NR 191.03 (intro.) should be deleted and replaced by the phrase “In this chapter:”. In several provisions, the phrase “as defined in s. NR 191.03” should be deleted. [For example, see s. NR 191.23.] Also, subs. (6) and (7) should be reversed so that the terms are in alphabetical order.

b. Section NR 191.04 (4) to (7) begin with “All” or “Any”. Can one term be used consistently?

c. In s. NR 191.06 (1) (g), “this chapter” should replace “this rule.” Similarly, in s. NR 191.07 (3), “subsection” should replace “provision.”

d. In s. 191.12 (intro.), the phrase “In addition to the definitions in s. NR 191.03” is redundant and should be deleted. In the second sentence of sub. (2), “is intended to” should be changed to “shall”. The term “conservation easement” should be defined in s. NR 191.12 rather than in s. NR 191.14 (intro.).

e. In s. NR 191.14 (1), either “may” or “shall” should be inserted between “funding” and “include.”

f. In s. NR 191.17 (4) (intro.), the period should be replaced by a colon. In sub. (7), the phrase “under s. NR 191.18 (2) (c)” should be inserted after “essential conditions.” Also, in sub. (7), the term “essential conditions” is used, but in s. NR 191.18 (2) (c), the term “essential

provisions” is used. As these appear to have the same meaning, only one term should be used consistently throughout the rule.

g. In s. NR 191.18 (2) (intro.), the phrase “all of the following” should be inserted after “include.”

h. In s. NR 191.34 (2) (c), “cannot” should be changed to “may not.”

i. In s. NR 191.42, slashed alternatives should not be used. Therefore, “dilution/flushing” should be changed to either “dilution and flushing” or “dilution or flushing”. The same problem occurs in s. NR 191.44 (1) (c).

j. In s. NR 191.45 (2) (intro.), “will” should be changed to “shall”. Subsection (3) (intro.) refers to “management alternative”, while sub. (2) (h) refers to “management action” and sub. (2) (L) uses “management practices.” Do these terms have the same meaning? If so, one term should be used consistently. If the terms have different meanings, the terms should each be defined. In sub. (3) (d), “will” should be changed to “shall” or “may.”

k. In s. NR 191.45 (3) (a), the parenthetical abbreviations should be deleted.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In the note to s. NR 191.05 (3), it would be more accurate for the note to include the language from s. 66.1001, “Under s. 66.1001, Stats., beginning on January 1, 2010, local governmental unit projects requesting state grant assistance under this chapter shall be consistent with that local governmental unit’s comprehensive plan.”

b. In s. NR 191.45 (3) (b) 2., the phrase “long-range environmental pollution as defined by s. 285.01 (9), Stats.” is incorrect and should be changed to “pollution as defined in s. 281.01 (10), Stats.”

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. Section NR 191.01 refers to “lake management units”. If “lake management units” are different than a “management unit” defined in s. NR 191.03 (4), the department should include a definition of “lake management unit” in the rule. If there is no difference between these terms, the term “management unit” should be used consistently throughout the rule. Also, it is unclear in s. NR 191.01 why “nonprofit conservation organizations” and “lake management units” are used separately, when the definition of “management unit” includes a nonprofit conservation organization.

b. Since the provisions in s. NR 191.02 apply to the entire chapter, the phrase “classification or” should be added before “protection project for a public inland lake”. In order to be consistent with the language in s. 281.68, Stats., the introductory part of the note to s. NR 191.02 (intro.), should be changed to “Under s. 281.68 (3m) Stats., to be a qualified lake association, an association shall do all of the following:”.

c. In s. NR 191.02, the word “tribes” is used, while in s. NR 191.03 (4), the phrase “federally recognized Indian tribe” is used. One term should be used consistently throughout the rule.

d. In s. NR 191.04 (title), should “Sponsor” replace “Grantee” since “sponsor” is a defined term?

e. In s. NR 191.04 (3), it is unclear whether a sponsor needs good cause to request a grant agreement amendment, or whether amendments are granted for good cause. The rule should also clarify that the department determines “good cause”. Are there guidelines regarding what the department considers “good cause”?

f. In s. NR 191.04 (4), the term “post audit” is vague. At what point in the grant process does an audit occur?

g. In s. NR 191.05 (1), applications may be submitted at any time to obtain approval of the grant eligibility of the department. However, in light of the following sentence, which states that applications must be submitted by May 1 of each year to be eligible for grant awards made that year, allowing applications to be submitted at any time is illogical. It is suggested that the second sentence of s. NR 191.05 (1) be deleted.

h. In s. NR 191.05 (3) (e), is a “resolution” the appropriate method for a sponsor, such as a nonprofit conservation organization to authorize a grant application? Perhaps a different term would be more accurate.

i. In s. NR 191.05 (6), is the department going to notify all applicants, even unsuccessful ones, of the department’s decision to award a grant? The rule should be more specific. In sub. (7), “necessary” should be changed to “required.” In sub. (8), the phrase “under s. NR 191.04” should be inserted in the first sentence between “reviewed” and “and.”

j. In s. NR 191.06 (1) (intro.), a sponsor is reimbursed for “estimated costs”; however, under s. NR 191.04 (2), a sponsor is eligible for reimbursement for “project costs.” If these terms have the same meaning, only one term should be used consistently. If the terms have different meanings, the department should define each term in the definitions section.

k. In s. NR 191.06 (2) (d), commas should be inserted before and after the phrase “but not limited to”.

l. In s. NR 191.07 (3), how will the department determine whether “completion of a project will result in providing public access, but not necessarily public boating access, to the lake where none currently exists”?

m. In s. NR 191.14 (1), the word “include” is vague. Can the department be more specific? In sub. (5), a grant may not be awarded where the sponsor “intends” to use the power of eminent domain to implement the project. A different word choice would be more appropriate, as how will the department know what a sponsor intends?

n. In s. NR 191.15 (1) (c), who determines whether a “difficult appraisal problem” exists? If the department makes that determination, what criteria are used to determine what constitutes a difficult appraisal problem? Also, are the “department established criteria” in sub. (1) (c) the same as the “department appraisal guidelines” under sub. (1) (b)? If so, only one term should be used. If the terms are different, what are the “department established criteria” and how can they be obtained?

o. In s. NR 191.15 (5), the term “monitor easements at least once a year” is vague. Does “monitor” mean something different than the comparison of the property with the baseline document and enforcing all easement provisions?

p. In the second sentence of s. NR 191.17 (4) (b), would it be more accurate to change the phrase “equals the value of the donation” to “equals the fair market value of the donation”?

q. Section NR 191.22 (3) refers to “functions or values”, while sub. (4) defines the term “functional values”. If these terms have the same meaning, only the term “functional values” should be used. This problem also occurs in s. NR 191.24 (3) (d). In sub. (10), the definition of “wetlands” should be changed to the phrase “has the meaning given in s. 23.32 (1), Stats.”

r. In s. NR 191.24 (3) (a), for residential sites, a “viewing and access corridor is allowed”, while for nonresidential sites, “Establishment of the viewing and access corridor is not eligible”. Does the department mean to say that a nonresidential project may establish a viewing and access corridor but that portion of the project is not eligible for funding, or is the establishment of a corridor in a nonresidential area prohibited? Also in sub. (3) (a), the rule should specify the point from which a setback of “50 feet or more” or “less than 50 feet” should occur.

s. In s. NR 191.24 (3) (d), the phrase “of the wetland” or “of the lake” should be inserted after “values”. Also, in the last sentence “should” should be replaced with “shall” and “where” should be replaced with “if.” In sub. (3) (f), how can a copy of the NRCS Interim Standard document be obtained? [See s. 2.08, Manual.] In sub. (3) (g), “is should be replaced by “shall be” and “law” should be inserted between “state” and “and.”

t. In s. NR 191.26 (1), the phrase “included as part of a comprehensive land use plan” should be inserted between “projects” and “the.” In sub. (5), what entity should prepare the “wetland management plan,” what elements should it include, and is it required under the grant contract?

u. In s. NR 191.30, the phrase “that will protect or improve a lake’s water quality or its natural ecosystem” should be inserted between “ordinances” and “and.”

v. In s. NR 191.33, “lake classification implementation projects” is not a defined term, although these projects seem to be referenced in the definition of “lake classification project” in s. NR 191.32. As the department appears to regard “classification projects” and “classification implementation projects” as two separate entities, it is suggested that “lake classification implementation project” be defined.

w. In s. NR 191.34 (2) (b), it appears that “class” should be changed to “category”, since under sub. (2) (a) an eligible project will classify lakes into “management categories”.

x. In s. NR 191.44 (1) (b) 1., the phrase “very likely will be controlled” is vague. Can the department be more specific about the extent to which the “sources or causative factors of the problems to be remediated” should be managed? Also, the activities listed under s. NR 191.44 (2) would be easier to read if they were broken into separate paragraphs.

y. In s. NR 191.45 (intro.), the process would be more understandable if the second sentence “Once the department has approved . . .” were moved to the end of the subsection. In addition, since it appears that the department does not approve a plan, but rather a recommendation contained in a plan, for grant eligibility it would be more accurate if the title of the subsection were changed to “Plan recommendation approval procedures and applications”.

z. In s. NR 191.45 (1) (c), the types of “Studies completed under ch. NR 190” should be listed. Also, “should” should be changed to “shall.” In sub. (2) (intro.), it appears that in the second sentence, “part or none of the plan” is actually referring to the recommendation, not the plan. If this is the case, then “plan” should be changed to “recommendation.” In sub. (2) (f), the phrase “the present time” should be changed to “the time of application.”

aa. In s. NR 191.46 (1), it would be clearer to say “A grant for a project under this subchapter may be made for up to 75% of the total cost of the project, but may not exceed more than \$200,000 per grant.” Similar changes are needed in ss. NR 191.17 (1) and 191.26 to clarify that the amounts shown are the maximum state share, not the maximum project costs. In the first sentence of sub. (2), “installed” is a poor word choice; “implemented” may be a better term.