

☞ **05hr_SSC-DNRRRR_Misc_pt06j**



☞ **Exhibits/comments submitted by Tilton. RE: DNR study regarding Lower St. Croix ordinary high water mark.**

(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...
PUBLIC HEARING - COMMITTEE RECORDS**

2005-06

(session year)

Senate Select

(Assembly, Senate or Joint)

Committee on ... DNR (SSC-DNRRR)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Section Divider

Moss

Moss are members of the plant kingdom, but are not vascular plants. This means that moss have no root system for water absorption from the soil and no protective layer on the aerial parts to prevent drying. Therefore mosses must live in moist environments in which they can absorb water through the leafy portions and in environments that do not allow the moss to dry out for extended periods of time (Raven et. al).

Mosses are abundant in moist areas. Some species of mosses can remain alive when dried for a period of several years and revive quickly when moistened, but other mosses are aquatic will live out of water only a day or two before dying. Of course, there are also species intermediate in the length of time they can survive out of water.

However, reproduction of moss requires water, since the male cells must swim through the water to fertilize the egg. So, moss requires at least seasonal inundation to reproduce.

Horticultural texts (Reiley and Shry 1983) indicate that moss growth occurs when there is too much shade and or too much moisture. Remedies of moss growth include reducing shade and tilling low wet areas.

Using mosses as an indicator of water level is problematic. Unless one has a manual of mosses, keying out the species of moss can not be accomplished with botanical manuals. Since mosses are not vascular plants, they are not included in the manuals that I have. ~~If one had a moss key and determined the species~~ of moss, the next step would be to determine its hydric preference. This would require a good moss ecology text. Moss species are not included on plant lists the DNR use for classifying hydric vegetation.

Knowing the species of moss and its ecological requirements are necessary because different species of moss are found across a wide range of habitats. Different species of mosses will tolerate varying periods of dryness and some moss species are found only in habitats with constant inundation. There are two species of moss that we regularly sample on lake beds, totally submerged: Fontinalis spp. and Drepanocladus spp.. Sphagnum spp. are generally found in bog situations in which parts of the moss are constantly in water.

Sources:

H. Reiley and C. Shry. 1983. Introductory Horticulture. Delmar Publishers, Inc.

Peter Raven, Ray Evert and Susan Eichorn. 1986. Biology of Plants. Worth Publishers, Inc. NY, NY.

E.03

Post, Eunice A.

From: Post, Eunice A.
Sent: Wednesday, August 24, 2005 12:28 PM
To: 'Denny Darnold'
Subject: FW: St Croix ordinary high water mark

Denny,

I am resending our earlier email correspondence regarding the 677 elevation you found for the ordinary high water mark in the City of Hudson. I have not received any of the field data yet. Would you please send that so I can include in the record for the ohwm evaluation?

Thanks
Eunice

From: Post, Eunice A.
Sent: Friday, July 22, 2005 3:51 PM
To: 'Denny Darnold'
Subject: RE: St Croix ordinary high water mark

Denny,

Thank you for the additional information. If it is not too much trouble, I have some additional questions.

In 1993, who with DNR advised you to use 676 msl as the ohwm for the office building? Was any field work done at that time to ensure that 676 met the ohwm definition as stated in case law, state statute and administrative code?

For the Nor Lake ohwm identification, what criteria in NR 118 was used? Or did you mean the definition of ohwm that is included in NR 118? If you meant the definition, would you mind sharing your field data, soil samples, vegetation inventory, identification of indicators, etc, that you compiled to make the ohwm determination at this site?

As for DNR having more useful or better information, we are in the process of gathering that as I mentioned before. The public meetings to show what we have gathered thus far are July 27 and 28, which is next week---so I hope to see you there.

For these meetings, Gary Lepak is compiling river level datum, frequency and duration, as documented by the Corps of Engineers gauge in Stillwater, MN.

The DNR also determines ohwm on a case by case basis; however, part of the reason for re-evaluating the ohwm at this time is in respond to the public's request that one specific river level be identified as the ohwm and discontinue the case by case procedure, at least that is how I understand it.

Just so you know, the DNR uses elevation 682 as the ohwm from Prescott upriver to the railroad property immediately south of the Lake Mallalieu dam. At the dam the ohwm changes to 685.75 and that elevation is used upriver to approximately Twin Springs landing.

Thanks again Denny, and I will include our correspondence as part of the ohwm re-evaluation file.

Eunice

000438

08/31/2005

T W A

Thomas Whitcomb Architect, Inc.
6741 Plymouth Avenue North
Golden Valley, MN 55427-4642
P (763) 593 4985
F (763) 543 0204
C (612) 978 0310
Etgwhitcomb@msn.com

October 28, 2004

William Tilton

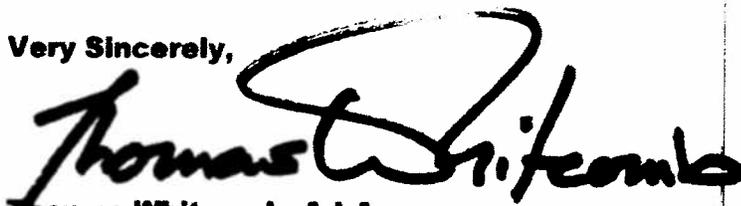
Tilton and Rosenbaum, PLLP
2220 US Bank Center
Saint Paul, MN 55101
P (651) 224 7687

Dear Mr. Tilton,

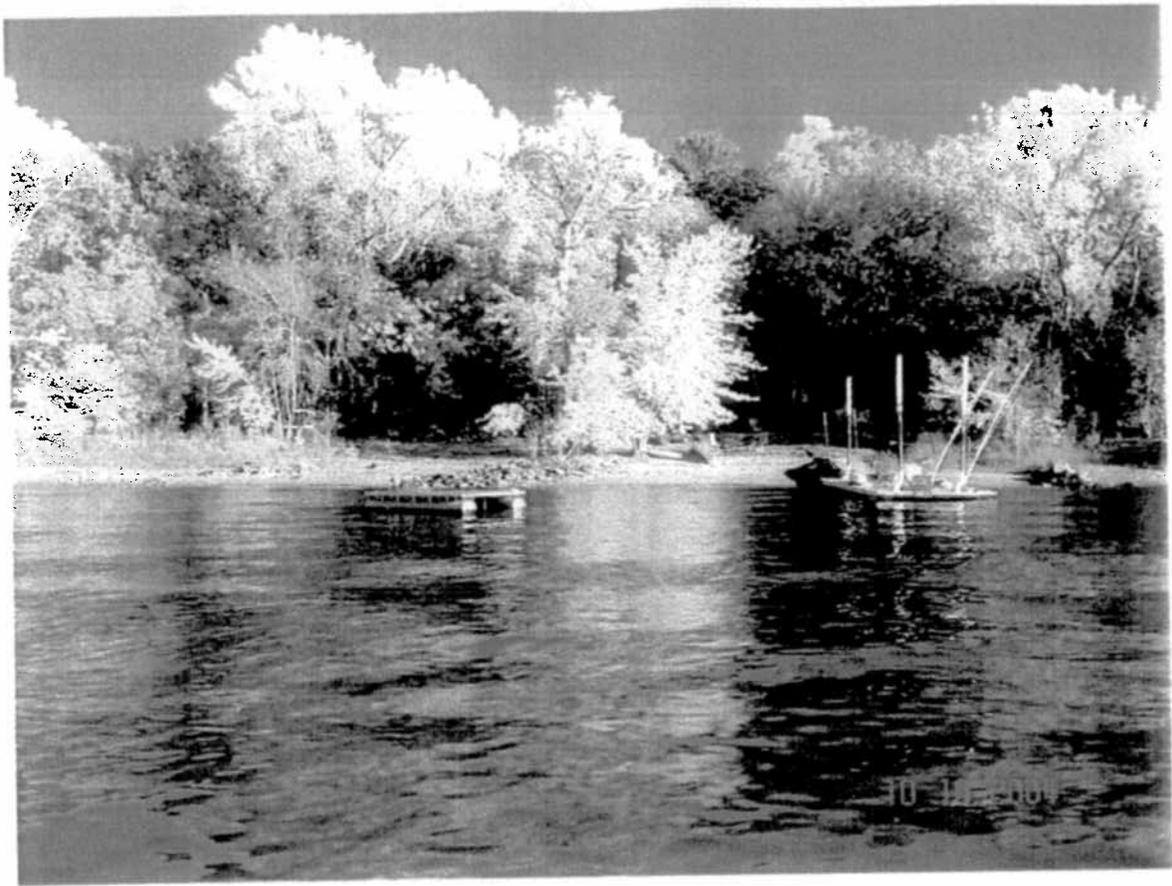
Thank you for allowing me to work with you on the remodeling, addition and flood protection to your home in Hudson, Wisconsin on Lake St. Croix (on The St. Croix River). As you know, the design drawings that I have prepared for you show all expansion of the existing house within the existing footprint and within the required 35'-0" height limit.

It is my intent that all construction documents that will follow these design drawings and that will lead to construction work, within the scope of my supervision, will be designed to withstand the flood pressures, depths, velocities, uplift and impact forces, and other factors associated with regional flooding, to keep the structure watertight and completely dry (other than garages and other non-habitable areas below flood level at the ground floor as noted on design drawings) to the flood protection elevation during flooding without human intervention.

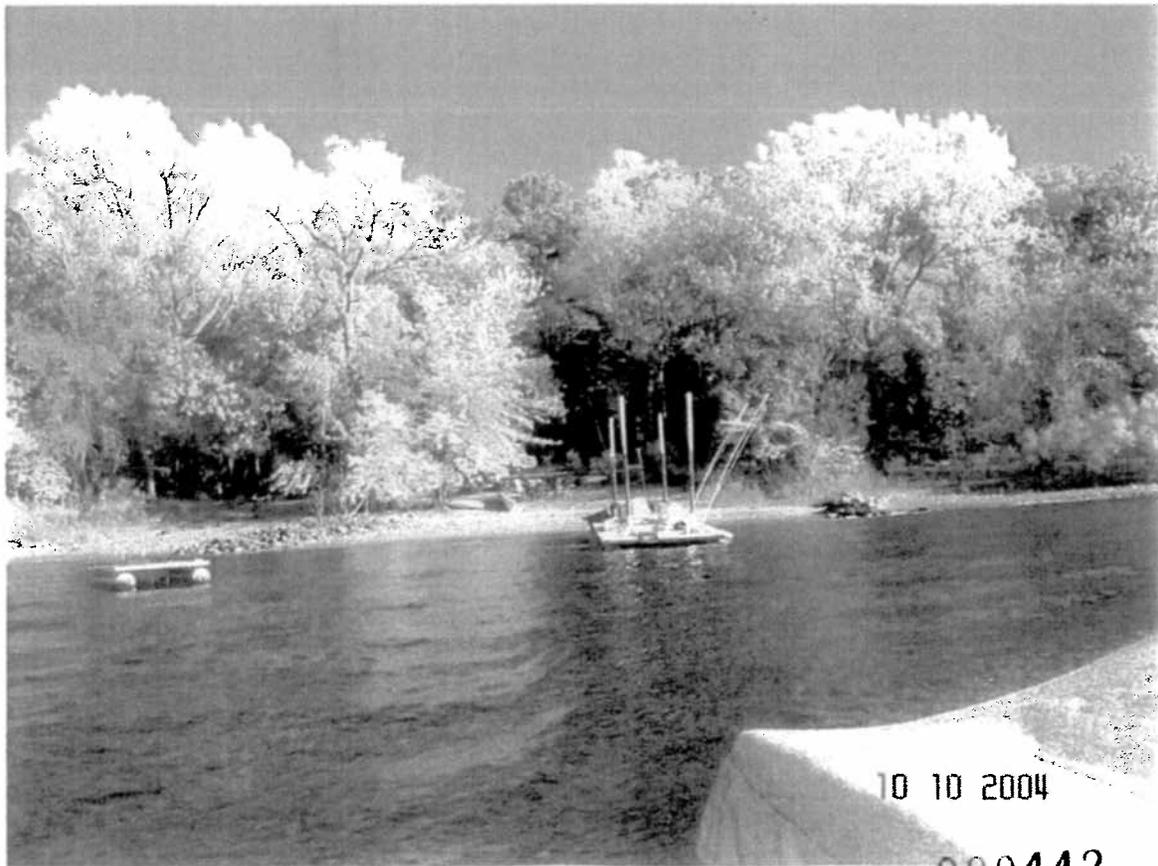
Very Sincerely,


Thomas Whitcomb, A.I.A.

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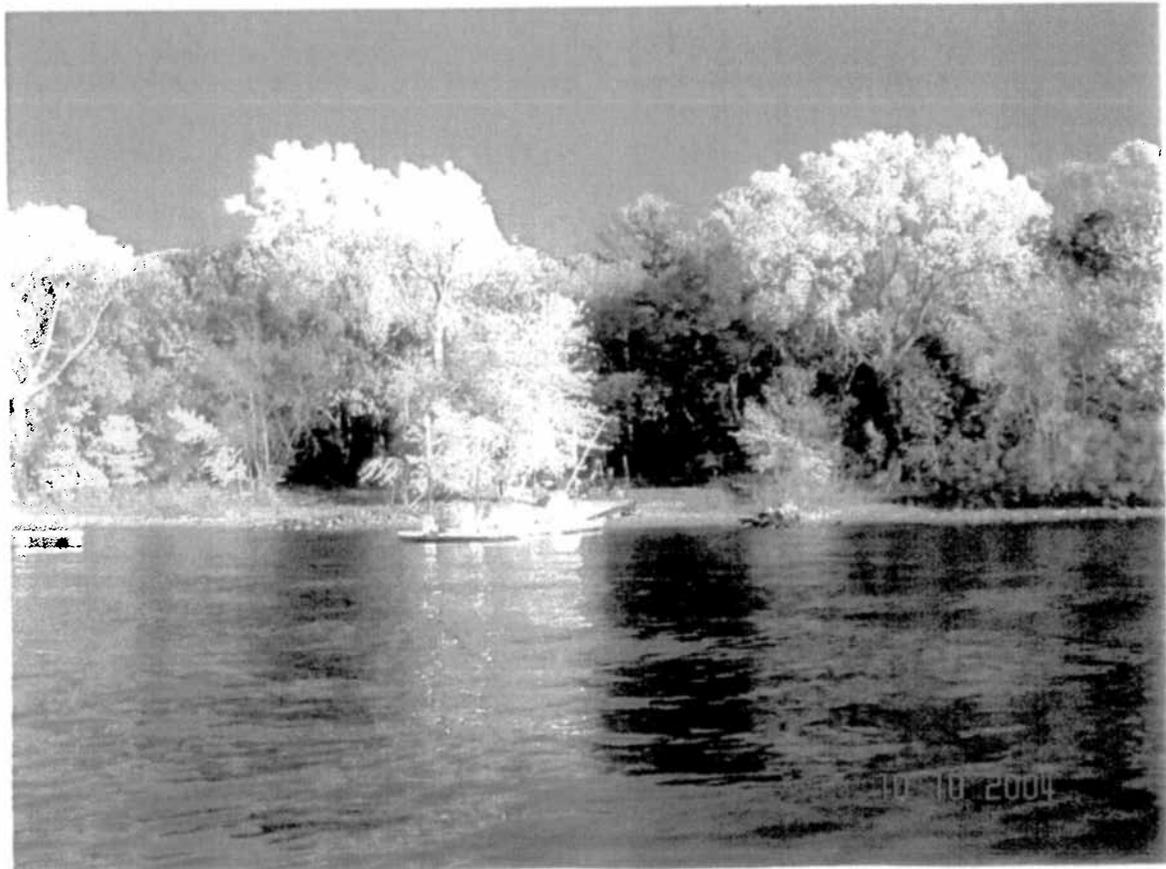


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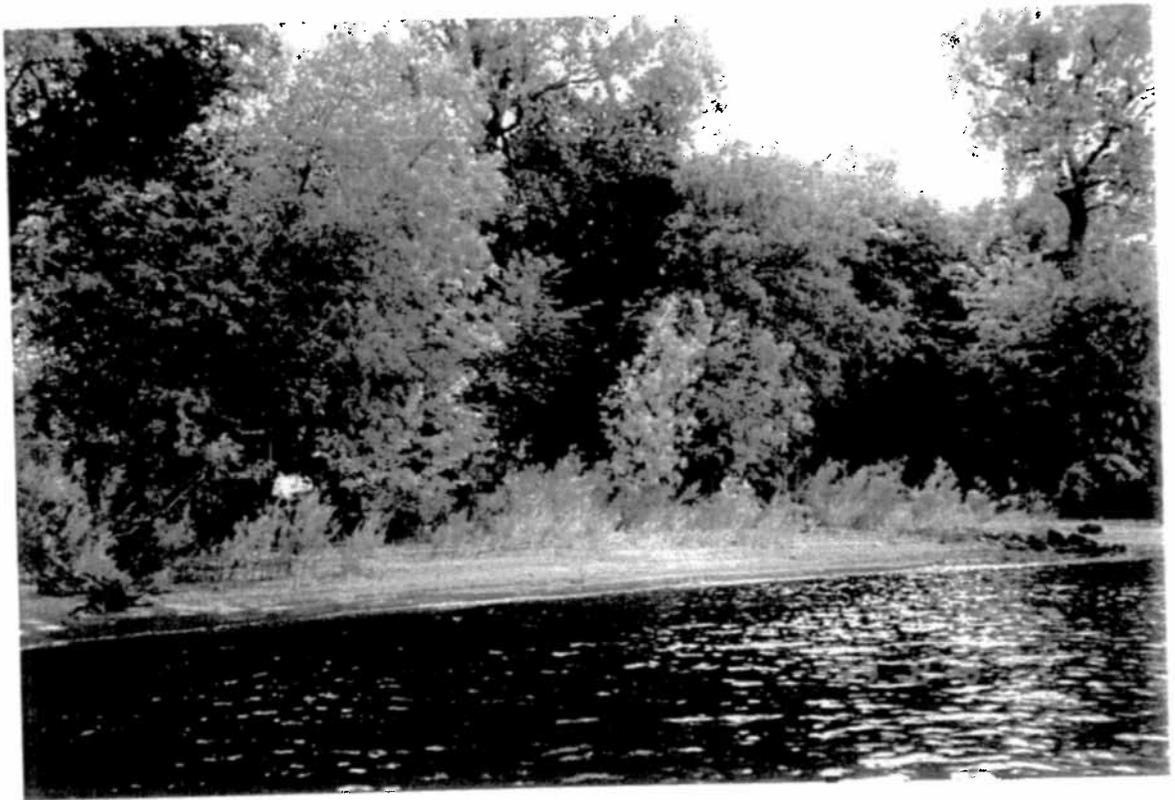
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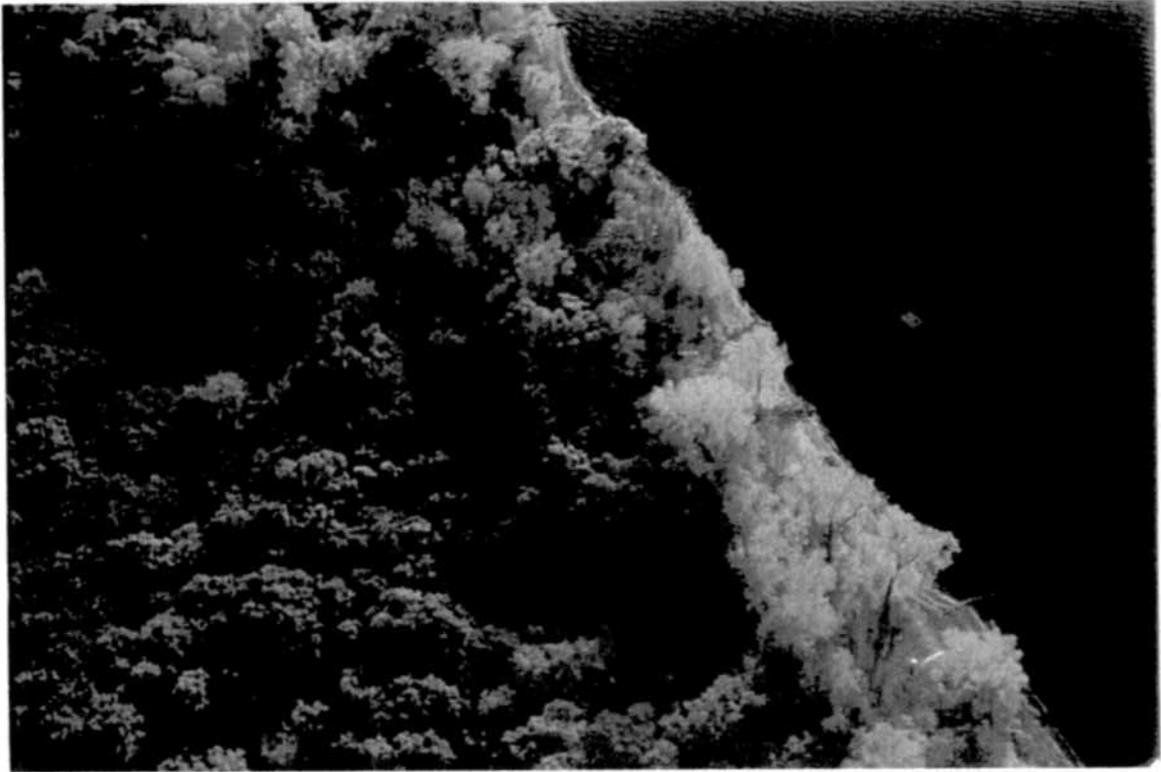
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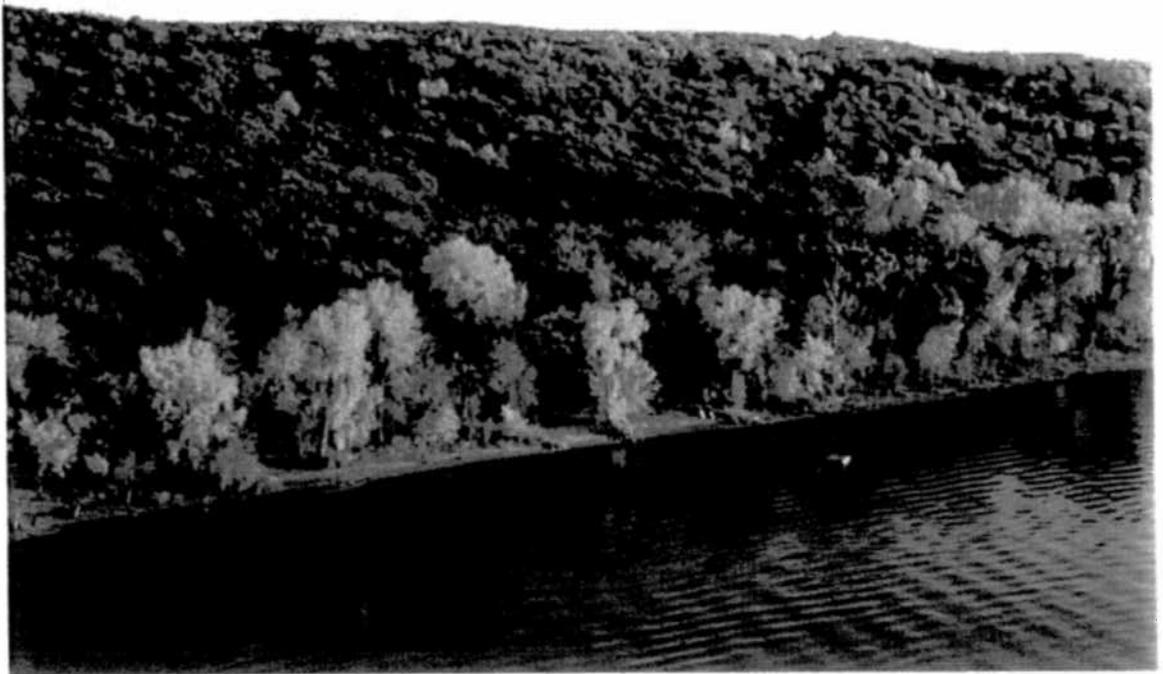
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From: Denny Darnold [mailto:ddarnold@ci.hudson.wi.us]
Sent: Friday, July 22, 2005 11:27 AM
To: Post, Eunice A.
Subject: Re: St Croix ordinary high water mark

Eunice,

In 1993 the city of Hudson Board of Appeals reviewed an application for variance to construct a private parking lot at 400 Second Street South for the proposed Grandview Office Building. At that time I was advised by WisDNR to use 676 feet msl as the elevation to require setback from the OHWM. I was particularly careful at that time to include Gary Lepak and Dan Koich in the review of both floodplain and riverway regulations, so that there would be no questions from the city, WisDNR, developer or general public about the compliance with zoning, floodplain and riverway regulations. As recently as a few years ago there was an application from a potential buyer of the Nor-Lake warehouse building and a proposal to establish private parking west of the building. At that time I reviewed the location of the OHWM with Doug Zahler, RLS, S&N Surveying and I indicated to him where I felt the OHWM was located using the criteria established by the NR118. When Doug surveyed the location the elevation was 677 msl based city datum.

If WisDNR has better or more useful information, please provide. I am anxious to see where the WisDNR research conducted for the past year will indicate the OHWM. I believe the biggest concern regarding the OHWM is what is it? I have been very concerned that WisDNR is misinterpreting scarring of the shoreline that has resulted in flood conditions as criteria for determining OHWM. In my experience the water has never rose above the low elevation of South Front Street except for rising river conditions due to floods. The low spot of the South Front Street is 684.9 msl.

In June 25, 2002 the elevation of the river prior to rising river conditions due to heavy rainfalls was 678.3 msl, June 24, 2003 - 675.8 and June 28, 2004 - 677.7 msl. I have always felt and substantiated by WisDNR opinion of 1993 that the ordinary high water mark is approximately 677 msl.

In my information given to Chris Anderson (Anderson forwarded to Francis Ogden) at his request was that the city does not have a set elevation for OHWM and is determined on a case to case basis based on the ~~criteria identified in NR118, but that my experience the OHWM is generally about 677 msl, give or take one-half foot.~~

Denny Darnold

----- Original Message -----

From: Post, Eunice A.
To: ddarnold@ci.hudson.wi.us
Sent: Thursday, July 21, 2005 4:14 PM
Subject: St Croix ordinary high water mark

Denny,

I attended a plan commission meeting in North Hudson last night. At the meeting Francis Ogden presented a letter from you, dated July 14, 2005, which stated that you generally use elevation 677 as the ordinary high water mark in Hudson.

As you probably know, the DNR is currently in the process of re-evaluating the ordinary high water marks set by Dan Koich and Ed Bourget. We held public meetings last winter to gather relevant information and present the field data we had collected thus far. We specifically asked for ordinary high water mark elevations as set by other agencies.

Would you please send me your field data, photos, field investigation reports or any information documenting your determination of the 677 ordinary high water mark so it can be included with the other ordinary high water mark information?

000454

Thanks
Eunice

000455

E.04

Post, Eunice A.

From: Molly Shodeen [molly.shodeen@dnr.state.mn.us]
Sent: Tuesday, August 30, 2005 3:42 PM
To: Dale Homuth; Glen Yakel; Kent Lokkesmoe; Scot Johnson; Post, Eunice A.; Baczynski, Robert J.
Subject: Final Wi OHW letter for Hearing
Attachments: Wi OHW2-ltr.doc



Wi OHW2-ltr.doc
(30 KB)

This is what I will read into the hearing record.

000456

E.04

Central Region Waters - 1200 Warner Road, St. Paul, MN 55106-6793
Telephone: (651) 772-7910 Fax: (651) 772-7977

August 31, 2005

Mr. B. Dale Simon
101 South Webster
FH/6
Madison, WI 53707

RE: St. Croix Ordinary High Water Mark Determination

Dear Mr. Simon:

You will hear many references to Minnesota's Ordinary High Water Elevation (OHW) in relation to the St. Croix, so I would like the record to reflect some of differences and challenges on how the two states apply and determine OHW for regulatory purposes.

Minnesota's definition of OHW is statutory (103G.005 Subd 14) and reads like this: Ordinary high water level means the boundary of waterbasins, watercourses, public waters and public waters wetlands, and:

- (1) the ordinary high water level is an elevation delineating the highest water level that has been maintained for a sufficient period of time to leave evidence upon the landscape commonly the point where the natural vegetation changes from predominately aquatic to predominately terrestrial;
- (2) for watercourses, the ordinary high water level is the elevation of the top of the bank of the channel;
- (3) for reservoirs and flowages, the ordinary high water level is the operating elevation of the normal summer pool.

Waterbasin is defined as an enclosed natural depression with definable banks. There are no ~~definitions for watercourse, reservoir or flowage in statute or rule. Over the last 10 years,~~ Minnesota DNR has been studying the application of our OHW definition on the Mississippi River system. The Mississippi system is a series of lock and dams, which creates pools. Similar to watercourse, reservoir and flowage, there is no definition of pool in statute or rule. The Mississippi pools do not function and are not operated like named reservoirs in other parts of our state such as the Leech Lake, Winnibigoshish, Red Lake, Big Sandy, etc.

Lake St. Croix existed as a wide spot in the river just like Lake Pepin on the Mississippi prior to lock and dam construction. It has some lake characteristics, but also has undeniable riverine characteristics such as flow and recurrent flooding. Bulletin 25, An Inventory of Minnesota Lakes, published in 1968, describes Pepin as being formed by sediments deposited by the Chippewa River which caused partial damming. Likewise, it describes the St. Croix as

000457

E-04

Mr. B. Dale Simon
August 31, 2005
Page 3

Wisconsin is now trying to get away from individual site visit OHW's and may decide to use elevations to be responsive to requests and inquiries. We support this effort, but realize that the determination may not be able to be consistent on both sides of the river due to our different statutory definitions and case law.

If you have any questions, please contact me at 651-772-7915.

Sincerely,

Molly Shodeen
Area Hydrologist

c: MNDNR, Jim Japs, Mel Sinn, Scot Johnson, Dale Homuth Kent Lokkesmoe
WIDNR, Eunice Poste, Bob Baczynski

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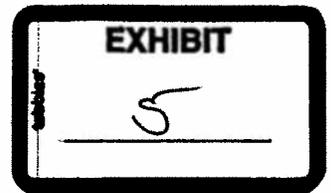
Section Divider



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE
St. Croix National Scenic Riverway
401 Hamilton Street
P O. Box 708
St. Croix Falls, Wisconsin 54024-0708



August 31, 2005

W42(SACN)

Scott Humrickhouse
Regional Director, West Central Region
Wisconsin Department of Natural Resources
P.O. Box 4001
Eau Claire, Wisconsin 54702-4001

Dear Mr. Humrickhouse:

Thank you for the opportunity to comment on the state's proposed Ordinary High Water Mark (OHWM) determination for the 25-mile stretch of the Lower St. Croix National Scenic Riverway from Prescott to the Twin Springs area in Wisconsin, commonly known as Lake St. Croix. We have no objection for the state to declare the OHWM for this area to be 681.5 feet for state and local planning and zoning purposes.

Please note, however, that we will use the OHWM established by the U.S. Army Corps of Engineers for review and comment on any water resources project requiring a federal permit under Section 7 of the Wild and Scenic Rivers Act.

Chief Ranger Brian Adams will attend the hearing at the St. Croix County Government Center in Hudson, Wisconsin, on August 31, 2005, and present this letter as our official comment. If you have any further questions please contact Brian at 715-483-3284, ext. 629 or by email at Brian_R_Adams@nps.gov.

Sincerely,

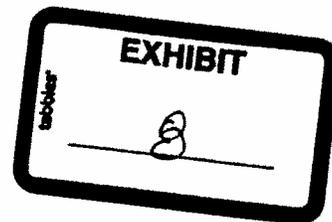
Thomas A. Bradley
Superintendent

000460

Section Divider



Minnesota Department of Natural Resources
Central Region Waters - 1200 Warner Road, St. Paul, MN 55106-6793
Telephone: (651) 772-7910 Fax: (651) 772-7977



August 31, 2005

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101 South Webster
FH/6
Madison, WI 53707

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Minnesota Department of Natural Resources

Dale Simon
August 2005

originally formed by the damming of Glacial River St. Croix by the Mississippi River, which created a delta across the head of the basin.

Since the pools on the Mississippi do not meet common definitions for reservoir or flowage, we have decided that previous attempts to use a "normal summer pool" elevation as the OHW on these waters was not in accordance with statute. In Minnesota DNR Region 3, we find that the scientific evidence indicates that these river reaches should be treated as watercourses, and that the OHW would be the top of the bank of the channel in accordance with our statutory definition.

A literature search done by our staff found several studies that indicated that the top of the bank of most watercourses would correlate to a 1.5 to 2 year flood level. Thanks to the recent Corps of Engineers flood study work on the Mississippi River, accurate discharge estimates are available and HEC 2 and HECRAS flood models can be used to estimate a 2-year flood elevation at any point on the Mississippi River downstream of the Twin Cities. Therefore, for the past five years or so, we have been using these 2-year flood elevations as an estimate of the OHW (top of bank) for the upper pools of Mississippi in MNDNR Region 3.

The St. Croix is impacted by Mississippi Pool 3, which is created by US Lock and Dam 3 in Red Wing. The elevation we use for the Mississippi for OHW estimates at the confluence of the St. Croix is 679.52 (NGVD 1929) using the 2-year flood elevation. This elevation also correlates with field investigations by our state survey crew who examined tree evidence using our lake OHW methodology. They found consistent physical evidence between 679 and 682 and even higher in some places. For permits to alter the bed of public waters, the MNDNR now uses 679.5' (1929) as an estimate of the OHW for the St. Croix south of Stillwater, and continue to use top of bank north of Stillwater. To get to 1912 datum, add .54 to the 1929 elevation.

We could make an on-site determination of the OHW on a case-by-case basis, which is very time consuming and would then require surveying in the mark. Instead, we have decided to rely on an OHW elevation estimate that is based on hydrology/hydraulics modeling and physical evidence. Minnesota believes that the elevations that have been developed over the last 10 years represent an accurate estimate of OHW based on our statutory definitions for these river systems and we are using them with confidence. The application of the location of the OHW for setback purposes is a separate issue that has always been handled by the local units of government, as they interpret and administer their St. Croix Ordinances. We do not anticipate any changes in this procedure under the current regulations. As always, local units of government may choose to be more restrictive.

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Minnesota Department of Natural Resources

Mr. B. Dale Simon
, 2005

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If you have any questions, please contact me at 651-772-7915.

Sincerely,

Molly Shodeen

Molly Shodeen
Area Hydrologist

c: MNDNR, Jim Japs, Mel Sinn, Scot Johnson, Dale Homuth Kent Lokkesmoe
WIDNR, Eunice Poste, Bob Baczynski

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EXHIBIT
9

000464

WATER LEVEL 678.45, 5-17-05

Mr. Francis H. Ogden
710 Valley View Dr
River Falls, WI 54022

EXHIBIT
20

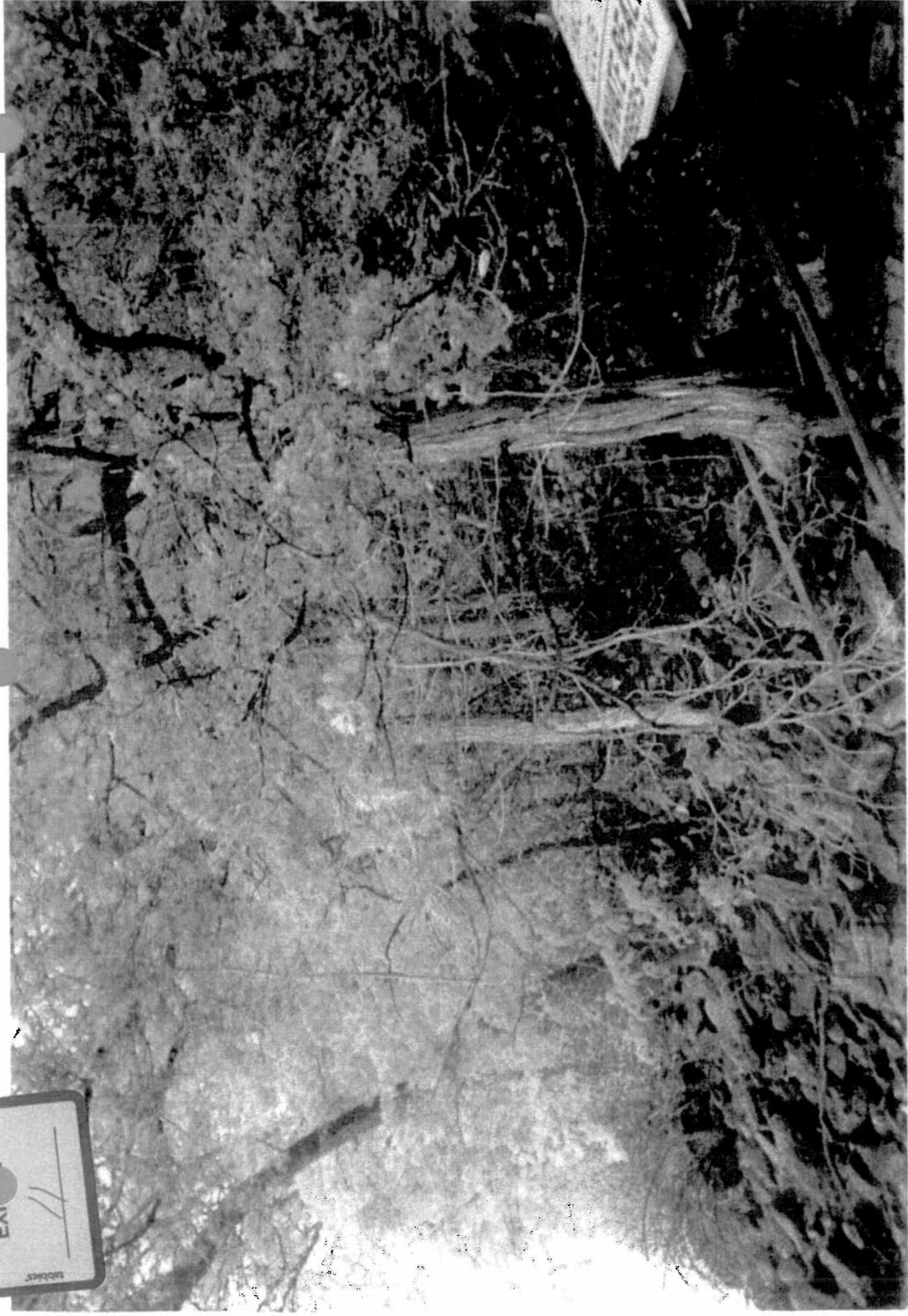
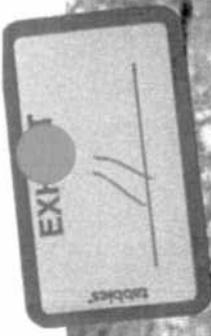


Mr. Francis H. Ogden
710 Valley View Dr.
River Falls, WI 54022

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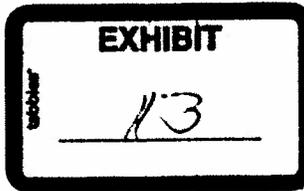
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Mr. Francis H. Ogden
710 Valley View Dr
River Falls, WI 54022

000466

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City of Hudson
505 Third Street
Hudson, Wisconsin 54016-1694
FAX: (715) 386-3385
www.ci.hudson.wi.us

Dennis D. Darnold
Community Development Dir
(715) 386-4776
ddarnold@ci.hudson.wi.us

Elizabeth A. Moline
Administrative Assistant
emoline@d.hudson.wi.us

Date: July 14, 2005

To: Chris Anderson, Attorney
From: Dennis Darnold, CDD

Sent by facsimile only - 7/14/05

Re: OHWM - City of Hudson / Lower St. Croix River National Scenic Riverway

You asked what criteria the city of Hudson uses to determine the Ordinary High Water Mark (OHWM) or what elevation is used as the OHWM within the city to establish setback requirements for construction within the Lower St. Croix National Scenic Riverway. The city of Hudson has not established a set elevation. In my experience the OHWM is generally at an elevation of 677 msl, plus or minus one-half foot. The characteristics / criteria used by the city of Hudson are specified in Wisconsin Administrative Rules, NR.118, Standards for the Lower St. Croix National Scenic Riverway. On-site conditions are verified by inspection by myself, a registered land surveyor or a WisDNR official to determine the OHWM based on characteristics / criteria such as aquatic vegetation and marks established on the river bank due to a continued presence of water. Care should be taken not to misidentify the OHWM with erosion that has been created by periodic flooding that in some instances has left marks on the banks of the river, but may be substantially higher than the OHWM.

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Cooperative Management Plan

January 2002

LOWER ST. CROIX National Scenic Riverway

Wisconsin Department of Natural Resources
Minnesota Department of Natural Resources
U.S. Department of the Interior • National Park Service

000468

Recommended: Anthony L. Andersen
Anthony L. Andersen
Superintendent, Lower St. Croix National Scenic Riverway

Date: May 1, 2001

Approved: William W. Schenk
William W. Schenk
Regional Director, Midwest Region, National Park Service

Date: 5/7/01

Approved: Allen Garber
Allen Garber
Commissioner, Minnesota Department of Natural Resources

Date: 5/2/01

Approved: Darrell Bazzell
Darrell Bazzell
Secretary, Wisconsin Department of Natural Resources

Date: 10/11/01

Section Divider



Lower St. Croix Land Use Advisory Group Minutes of Meeting #2, April 14, 1999

(As approved April 29)

Meeting Attendance:

Minnesota DNR: Steve Johnson, Molly Shodeen

Wisconsin DNR: Terry Moe, Eunice Post

Advisory Group representation: Bill Newman, Chisago County; Ann Terwedo, Washington County; Scott Holloway and Jack Warren, Marine on St. Croix; B.F. Lee, Lakeland; George Subiti, Lakeland Shores; John Jansen, Lake St. Croix Beach; Pat Snyder, Afton; Bruce McConoughy, New Scandia Township; Steve Fisher, St. Croix County; Dennis Damold, Hudson; Gene Anderson, Prescott; Juergen Weidling, Town of Troy; Paul Mosby, Town of Clifton; Joe Riley, Midwest Marina Association; Dave Wald, St. Croix River Association; Audrey Halverson, Sierra Club; Francis Ogden, Citizens for Responsible Zoning and Landowner Rights.

Others attending: Tim Blide, Ann Blide, Richard Mueller, John Ewing, Mary Glenna, Nancy Franz, Stu Krueger, Rod Eslinger, Pat Nolan, Harold Radke, Paige Olson, Tina Swan, Elaine Krengel, Laura Reynolds, John O'Connor, Larry Wolf, Liz Wolf, Linda O'Donnell, Jim Packard, Russell Eichman, Jim Kleinhans, Will Kline, Paul Montgomery, Randy Thoreson, Jan Woodfill, Kitty Rhoades, Jeffrey Sovereign, Bruce Swanson.

Minutes of March 9: The following corrections were made to the minutes of the March 9 meeting: It was agreed they would be called minutes, not summary, and would be subject to formal approval. It was agreed to add text on discussion of the use of existing natural contours for the basis for structure height measurement of new structures and existing condition for additions to existing structures. It was agreed to add text on the determination of average ground level and note that this concept needs additional work. The revised minutes were approved with one dissenting vote.

Discussion included the suggestion that some groups should not have been permitted to appoint more than one member without determining which would be the alternate.

Note: Please note that there is a separate memorandum on this topic being distributed with the advance materials for the April 29 meeting.

There was also discussion about definition of terms. The DNRs had decided to hold discussion of the definition of terms off until toward the end of the process next fall, when the context of the terms is clear and the group has determined that a particular term will actually be used. Discussion suggested, though, that there are some terms that will

000470

certainly be used and the full implications of a section of the draft generic rule aren't clear until the term is defined, so some definition work should be done as we go. Agreed.

Steve Johnson said the DNRs were prepared to provide for public distribution of all information they had about Advisory Group members, including addresses, phone numbers, fax numbers and e-mail addresses, to make them more accessible to each other and to the general public. If anyone wants to protect their privacy and would like that information to *not* be made available to the public, please contact Steve Johnson at 651-296-4802 and leave a voicemail message, or contact him by e-mail at <steve.johnson@dnr.state.mn.us>.

Structure color: Steve Johnson began discussion of structure color by noting historic reference to the standardized Munsell color chart, which is used by the Lower Wisconsin State Riverway Board, among others, to declare which colors meet the definition of "earthtone." The 1976 Appendix A guideline for state rules recommended earthtone color requirements in the rural area, but not within municipalities; state rules in both states, however, subsequently did require earthtone colors in all districts. The 1999 Appendix A guideline for state rules again recommends local governments be free to make their own determinations in the small town historic, small town and river town districts (which make up the bulk of the municipalities). The 1999 guideline also, for the first time, recommends historic structures be able to be painted whatever color is appropriate for their period in history.

Discussion included the suggestion that the Munsell color chart not be followed and that the rule avoid reference to vegetative tones, but there should be reference to natural wood tones, as well as earth and stone. It was noted the purpose of regulation of structure color was to reduce the structure's visibility and enable it to better blend in with the valley's background colors. There was comment supporting the language in the current Minnesota rule that exempted a structure from the color requirement if it was screened by topography. The concept contained in the 1999 Appendix A was adopted unanimously, but it was agreed there needs to be more work done to define "earthtone" and bring that information back to the group.

Note: the earthtone definition will be taken up at a later meeting.

Structure placement (setbacks): Steve Johnson explained that the 1999 Appendix A provides clear guidance on structure setback dimensional requirements, but there are some issues that need discussion. The two states have different definitions of Ordinary High Water Mark (OHWM) or Ordinary High Water Line (OHWL), and Minnesota's definition applies different standards to free-flowing rivers as compared to impoundments, resulting in three standards being applied to the Lower St. Croix. It might be possible to avoid the problem by using another term, like "river's edge," which is used in the 1999 Appendix A, and providing that term with a single definition unique to the St. Croix rules

This needs to be discussed with legal staff. Discussion noted it might be possible to split the definition at the Arcola Sandbar, where the impact of impoundment by Lock/Dam 3 has ended, using the "flat pool" definition of 675 feet (msl) below there and Wisconsin's definition above (discussion suggested Wisconsin's definition may be easier to locate in the field than Minnesota's). Concern was raised that Wisconsin Shoreland Rules would still apply on the St. Croix and those rules would still use Wisconsin's definition. Support for a common definition was adopted unanimously.

Steve Johnson said the only pending issue with bluffline setback is defining the term bluffline. Staff will prepare something for further discussion. It was agreed the rules need to contain an exemption to setback standards for docks, stairways and lifts. Minnesota rules currently reference an exemption to setback standards for piers, but that reference can be deleted since piers are not allowed on the St. Croix.

Minnesota rules currently provide for a lot width requirement at the building line and at the side abutting or nearest the river; Wisconsin rules provide for a lot width requirement only at the building line. It was unanimously agreed that a lot width requirement at the building line would be sufficient.

Wisconsin rules require a 25-foot structure setback from property lines, while Minnesota rules are silent on the topic and allow local governments to set their own standard in their underlying zoning ordinance. It was unanimously agreed that the Minnesota model is appropriate for the new rules.

The meeting adjourned at 9 p.m.

onto or from watercraft. Such a structure may include a boat shelter which is removed seasonally. Such a structure may include a boat hoist or boat lift, and the hoist or lift may be permanent or may be removed seasonally.

planned cluster development: (see also 10/28)—MN—"Planned cluster development" means a pattern of subdivision development which places dwelling units into compact groupings while providing a network of commonly owned or dedicated open space.

public roads: MN—"Public roads" means county, municipal, and township roads and highways which serve or are designed to serve flows of traffic between communities or other traffic-generating areas.

public waters: MN—"Public waters" means any waters of the state which serve a beneficial public purpose as defined in Minnesota Statutes, section 105.37, subdivision 6.

recreation use—active: 6/29—"Recreation use—active" means all uses such as tennis, racquet ball clubs, amusement centers, bowling alleys, golf driving ranges, miniature golf, golf courses, ice arenas, movie theaters and similar activities which are used as a commercial enterprise.

recreation use—passive: 6/29—"Recreation use—passive" means a recreation use particularly oriented to utilizing the outdoor character of an area for passive forms of recreation such as employee recreation areas, nature centers, conservancy, and interpretive centers.

repair: "Repair" means normal repairs and maintenance of a structure, including residing, repairs to plumbing and electrical systems, reroofing, installation of storm windows, insulation, installation of replacement heating or air conditioning unit, painting, installation or replacement of plumbing, rewiring/updating to comply with electrical codes, installation of central air conditioning, structural alterations necessary for the safety of the building, and alterations, repair or maintenance reasonably done under emergency conditions to preserve or protect life or property. *(From MDNR Floodplain Management Handbook for Local Officials; based on FEMA guidelines.)*

riprap: 10/28—don't think we need to define this

river's edge: 4/14—"Upstream of the Arcola Sandbar, "river's edge" is defined as the point on the bank or shore up to which the presence and action of water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristics. Downstream of the Arcola Sandbar, "river's edge" is defined as elevation 675.0 msl."

Section Divider

ST. CROIX LANDOWNERS ASSOCIATION

Paul Mosby, President



ORDINARY HIGH WATER MARK The point from which setback is measured.

Lake St. Croix is that body of water from just above Stillwater, 24 miles, to the Mississippi River. The federal government aptly calls it a lake with a river flowing through it. The two states call it a river. Inclusion of the St. Croix under the federal Wild and Scenic Rivers Act in 1974 requires both states be as similar as possible in regulation of the resource.

The Wisconsin DNR is in the process of setting a new OHWM on Lake St. Croix. They are considering making the OHWM 8 to 9 feet higher than that used by the Minnesota DNR on the west side of the lake.

Lake St. Croix is impounded water; impounded by lock and dam 3 on the Mississippi River. Therefore, the water level on Lake St. Croix is artificially set and maintained. On average, for more than 9 months of the year, this water level is 675 ft. mean sea level – 1912 datum. The rivers edge at 675 is an easily identifiable and predictable point from which to measure setback.

Setback is the most critical issue in determining what you can do on your property. Namely, whether your dwelling and other structures are dimensionally nonconforming or even the future possibility of any new construction. Setback, in fact, determines the value of your property.

A blue ribbon panel was formed by WIDNR in 1999 to debate Lower St. Croix land use matters and make recommendations to them. This group was made up of 80% local government representatives and 20% stakeholder group representatives. It met 22 times over a period of 3 years. On April 14, 1999, this group, **the Lower St. Croix Land Use Advisory Group, after lengthy debate, voted unanimously to recommend WIDNR adopt the term "rivers edge at 675" to be used as the point from which to measure setback - - - just as Minnesota has for more than three decades on Lake St. Croix.**

The Wisconsin DNR refuses to accept "rivers edge at 675" as the point form which to measure set back and instead insists upon OHWM. This will create and maintain significant differences in nonconformities on the Wisconsin side vs. Minnesota. This is flatly unacceptable.

Very credible studies by private engineering firms (both Barr and Ogden) in recent years have found the OHWM on Lake St. Croix to be 677 ft. mean sea level – 1912 datum. The City of Hudson has used 677 ft. mean sea level – 1912 datum for more than 15 years while the WIDNR has forced the Village of North Hudson to use 687 ft. mean sea level.

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