

Chapter NR 118

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

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(Sections 23.09, 23.11, 30.27 & chapter 227, Stats.)

Note: Chapter NR 118 as it existed on June 30, 1980 was repealed and a new chapter NR 118 was created effective July 1, 1980.

NR 118.01 Purpose. The following rules are necessary to reduce the adverse effects of poorly planned shoreland and bluff area development, to prevent pollution and contamination of surface and groundwaters and soil erosion, to provide sufficient space on lots for sanitary facilities, to minimize flood damage, to maintain property values, to preserve and maintain the exceptional scenic and natural characteristics of the water and related land of the lower St. Croix river valley in a manner consistent with the national wild and scenic river 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).

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80.

NR 118.02 Applicability. (1) **THE LOWER ST. CROIX RIVER DISTRICT BOUNDARIES.** These rules shall apply within the boundaries of the lower St. Croix 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.

(2) **LOWER ST. CROIX RIVER DISTRICT.** Each ordinance enacted or amended by a city, village or county shall designate a lower St. Croix river district in accordance with the previously described boundaries.

(3) **LOCAL REGULATIONS.** Local regulations adopted pursuant to s. 30.27, Stats. 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.

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80.

NR 118.03 Definitions. (1) "Accessory building" means a building on the same premises and subordinate to the principal use customarily incidental thereto.

(2) "Agriculture" means general farming, including dairying, live-stock and poultry raising, nurseries, greenhouses and other similar enterprises.

(3) "Bluff face" means that area riverward from the bluffline where slope toward the river equals 12% or more with the horizontal interval

of measurement not exceeding 50 feet. Rock bluff faces are those consisting of primarily exposed bedrock material. For the purposes of this definition, bedrock means any igneous, metamorphic or sedimentary material which is more than 50% consolidated (more than 50% consolidated rock material by volume). Soil bluff faces are those consisting of primarily soil material. For the purposes of this definition, soil means any unconsolidated material consisting of primarily varying amounts of sand, silt or clay which is less than 50% consolidated (more than 50% soil material by volume).

(4) "Bluffline" means a line along the top of a slope, connecting the points at which the slope, proceeding away from the river or adjoining watershed channel which is not visually inconspicuous becomes less than 12%. The location of the bluffline shall be certified by a registered land surveyor, soil scientist or a landscape architect.

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

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

(7) "Dock" means a temporary structure extending into the water to facilitate the launching or mooring of watercraft or for fishing during the open water season.

(8) "Dwelling unit" means a building or portion thereof with rooms arranged, designed, used or intended for one family.

(9) "Land division" means any division of a lot, parcel or tract by the owner thereof 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.

(10) "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.

(11) "Lift" means a mechanical device either temporary or permanent containing a mobile open top car including hand or guard rails and sides of adequate height to contain small loose articles, a track upon which the open top car moves, and a mechanical device to provide power to the open top car.

(12) "Local ordinance" means any county, town or municipal 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 river district.

(13) "Lot" means a parcel, piece or portion of land, defined by metes and bounds, certified survey, recorded land subdivision plat or other means and separated from other lots, parcels or similar units by such description.

(14) "Net project area" means lands intended for building development within identified project boundaries lying within the lower St. Croix river district less:

- (a) Land slopes in excess of 12% toward the river.
- (b) Area of stream floodways.
- (c) Area of road right-of-way.
- (d) Major drainage ways.

(15) "Ordinary highwater mark" means 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.

(16) "Selective cutting" means the removal of single trees or shrubs.

(17) "Setback" means the minimum horizontal distance between a structure and:

- (a) The ordinary highwater mark;
- (b) The bluffline; or
- (c) Lot lines.

(18) "Sewage disposal system" means any system for the collection, treatment, and disposal of sewage including, but not limited to septic tanks, soil absorption systems, holding tanks and drainfields.

(19) "Single family dwelling" means a detached building containing one dwelling unit.

(20) "Slope" means all lands between the ordinary highwater mark and the bluffline.

(21) "Soil scientist" means a person who has graduated with a major in soil science from a 4-year college program.

(22) "Stairways" means a series of steps which may be constructed of wood, metal, stone or any combination of those materials for the purpose of allowing persons upward and downward mobility in bluff areas.

(23) "Structure" means any wall, building or appurtenance thereto but not including stairways and lifts.

(24) "Substandard lot" means a lot created and recorded prior to the effective date of ordinances implementing these rules which does not meet the dimensional requirements of these rules.

(25) "Transmission services" means electric power, telephone and telegraph lines, cables or conduits, or pipelines that are used to transport large blocks of power or oil or gas, convey information or transport materials between 2 points. In the case of electrical power, this will generally apply to transmission lines operating at 69,000 volts or more. For main pipeline crossings of gas, liquids or solids in suspension, this means those uses to transport such materials between 2 points.

(26) "Visually inconspicuous" means difficult to see or not readily noticeable in summer months as viewed from the river.

Note: All distances unless otherwise specified shall be measured horizontally.

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80.

NR 118.04 Severability. If any section, paragraph, phrase, sentence or clause of this chapter should be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80.

NR 118.05 Land uses and activities in the lower St. Croix river district. The following classifications, uses, structures and services shall be subject to the general provisions contained in NR 118.06.

(1) **UNINCORPORATED AREAS.** (a) *Permitted uses.* 1. Single family detached dwellings.

2. Nonstructural open space uses associated with maintaining the value of certain lands for natural areas, scenic, recreation, wildlife management, water and soil conservation and other such purposes.

3. Agriculture (nonstructural) including silviculture in compliance with NR 118.06 (11).

4. Highway waysides, rest areas and scenic overlooks.

5. Governmental structures used as information centers or for resource management to improve the fish and wildlife habitat.

6. Signs as approved by state or local governments which are necessary for public health and safety; signs indicating areas that are available or not available for public use; and signs that are otherwise lawful, provided they are not visible from the river.

7. Accessory buildings, provided they are not located closer to the bluffline than the principal structure.

8. Docks and piers that have a permit from the army corps of engineers.

(b) *Conditionally permitted uses and activities.* 1. The following uses are subject to approval after class 2 notice and public hearing:

a. Land divisions.

b. Transmission services.

c. Filling, grading and rock riprapping for shoreline protection.

d. Stairways or lifts.

2. The applicant shall submit sufficient copies of the following information to the county 30 days prior to the hearing on the application for a conditionally permitted activity. The applicant seeking a permit for land divisions, transmission services, or filling and grading shall submit information required by subds. a. to f. The applicant seeking a permit for a stairway or lift shall submit information required by subds. a. to d., g. and h. Information required by subds. a. to f. shall be certified by a professional engineer or land surveyor registered in Wisconsin. Information required by subd. g. shall be certified as required in the "bluff face" definition.

a. Plat or survey showing the property location, boundaries, dimensions, elevations, blufflines, utility and roadway corridors, and the ordinary highwater mark or regional flood elevation (if applicable).

b. Location of existing and proposed structures.

c. Location of existing and proposed alterations of vegetation and topography including filling and grading.

d. Adjoining land and water uses, including natural values in terms of spawning grounds and fish and game habitat.

e. Suitability of area for onsite waste disposal. Size and location of system shall be indicated. If a municipal wastewater collection and treatment system is to be utilized, the developer must submit a written agreement from the municipality or sanitary district indicating that the system has the capacity to handle the development.

f. Water supply system.

g. Whether the bluff face is a soil bluff face or a rock bluff face.

h. Photos of the area of proposed permitted and conditional uses and activity as viewed from the lower St. Croix river.

3. Review of conditionally permitted uses and activities. No less than 20 days prior to the hearing, the county shall send a copy of the above information to the following agencies for review and comment:

a. County planning department.

b. Department of natural resources.

c. Regional planning commission.

d. Town board.

e. Minnesota-Wisconsin boundary area commission.

4. Hearing record and decision. The hearing record shall contain the comments of the agencies listed in NR 118.05 (1) (a) 3. The decision in regard to permitting land divisions, transmission services, or filling and grading shall address all points with the exception of subd. g. The decision in regard to permitting lifts or stairways shall address all points. No use or activity shall be permitted unless it can feasibly comply with all requirements of NR 118.06.

a. The scenic and recreational qualities of the lower St. Croix scenic riverway.

b. The maintenance of safe and healthful conditions.

c. The prevention and control of water pollution including sedimentation.

d. The location of the site with respect to flood plains and floodways of river and streams.

e. The erosion potential of the site based upon degree and direction of slope, soil type and vegetative covers.

f. Location of site with respect to existing or future access roads.

g. The amount of liquid wastes to be generated and the adequacy of the proposed disposal system.

h. The compatibility of the project with uses on adjacent land.

i. The use of common corridors for locating proposed facilities within or adjacent to existing public service facilities such as roads, bridges and transmission services.

j. Whether the bluff face is a soil bluff face.

5. The county shall submit a copy of the written decision including a summary of the hearing, to the department within 5 work days of the date of the hearing for department approval, modification or rejection within 20 days. No response within 20 days shall be deemed an approval.

(2) **INCORPORATED AREAS.** (a) Zoning and subdivision regulations existing on the effective date of these rules shall prevail with these qualifications:

1. The incorporated areas shall provide a timely copy of the notice of hearing and a copy of the decision on applications including but not limited to annexations, variances, amendments and conditional uses to:

a. County planning agency.

b. Regional planning commission.

c. Minnesota-Wisconsin boundary area commission.

d. Department of natural resources.

2. The general provisions contained in NR 118.06 shall be contained within municipal zoning ordinances, with the exception that provisions in such municipal ordinances setting height, lot area, lot width and depth or density standards shall prevail and substitute for height, lot area, width and depth and density standards set forth in NR 118.06. The general provisions of NR 118.06 shall apply if comparable provisions are absent from municipal ordinances.

3. The zoning of unincorporated lands in the lower St. Croix river district proposed to be annexed to incorporated areas shall be subject to the approval by the department after consultation with the annexing incorporated area and the county.

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80.

NR 118.06 General provisions. The following general provisions shall be contained in local ordinances:

(1) **PROHIBITED USES.** Within the lower St. Croix river district, all uses not listed as conditionally permitted or permitted uses shall be prohibited.

(2) **DENSITY STANDARDS.** (a) Detached single family dwellings. No more than one dwelling per unit per acre of net project area may be allowed. There shall be no more than one principal structure on each parcel.

(b) Planned unit development. The number of proposed family dwellings permitted shall not exceed by more than 50% the number of units allowed if the proposal was based on single family dwelling units.

(3) **SETBACK FOR STRUCTURES, PARKING FACILITIES, PRIVATE ROADS, PUBLIC STREETS AND TRANSMISSION SERVICES.** (a) The minimum setback shall be 200 feet from the ordinary highwater mark or 100 feet from the bluffline, whichever distance is greater from the ordinary highwater mark.

(b) The board of adjustment for counties or the board of appeals for cities and villages may grant a variance to the setback requirements in par. (a) above for pre-existing parcels only where the applicant has proven that a hardship exists. However, no variance shall be granted for a setback which is less than 40 feet from the bluffline; or where such variance shall result in a change in natural appearance of the shoreline, slope or bluffline as viewed from the river. It is the responsibility of the applicant to justify the need for such a reduced setback and display how the proposed structure will be visually inconspicuous from the river. The setback line shall be delineated on the application and staked out by the applicant. The local enforcement official shall certify the accuracy of setback line prior to construction.

(c) Justification for a reduced setback shall be based on limitations imposed by the physical characteristics of the property, not on the economic or other conditions of the applicant.

(4) **PLACEMENT OF STRUCTURES.** Structures shall not be located on slopes facing the lower St. Croix river of greater than 12%. Alterations of such slopes to overcome this limitation are not permitted.

(5) **HEIGHT.** The height of any structure shall not exceed 35 feet above average ground level.

(6) **LOT WIDTH.** Parcels or lots created for single family dwellings shall be no less than 200 feet in width at the building line.

(7) **LOT LINE SETBACK.** All structures or portions thereof shall be located at least 25 feet from all property lines.

(8) **DOCKS AND PIERS.** Docks and piers associated with riparian residential developments shall be allowed only during the open water season and shall only extend into the water the minimum distance necessary to allow the launching and mooring of watercraft and shall be parallel with the shoreline whenever possible, and shall not exceed the resource limitations of the site or extend beyond the slow speed shore zone. No covered slips or framed canopies shall be constructed. They shall be in earth tones. Lighting of dock or pier areas is permitted only if required by federal, state or local laws or for lighting municipal facilities in incorporated areas only for health and safety reasons.

(9) **LIFTS.** Lifts may be permitted on soil face bluffs only provided the following standards are met:

(a) The primary function of a lift shall be for the transportation of persons up and down the bluff face.

(b) No lift shall be designed and utilized for the transport of boats or machinery up or down the bluff face.

(c) All visible parts of lifts shall be painted or finished in natural or earth tones and be visually inconspicuous.

(d) Lifts shall be located in the least visually conspicuous portion of any lot.

(e) No construction shall begin on any lift until the applicant has provided local code enforcement officials with a plan showing all necessary construction data including location of the lift, design, size, color, dimensions and other pertinent information. The plan shall contain a certification by a registered professional engineer or architect that the lift components are securely anchored to prevent them from shifting and from causing accelerated erosion.

(f) The car of any lift shall not exceed 4 by 6 feet. Cars may have hand rails but no canopies or roofs shall be allowed. Location of the transporting device or power source shall not be visually conspicuous.

(10) STAIRWAYS. Stairways may be permitted on only soil face bluffs provided the following standards are met:

(a) No stairway shall exceed 36 inches (3 feet) in width.

(b) Landings may be permitted at a minimum vertical interval of 20 feet. Landings shall not exceed 40 square feet in area.

(c) Stairways shall be painted or stained in earth or natural tones or may be left unfinished if constructed of wood materials and shall be visually inconspicuous.

(d) Railings of hand rails are permitted in conjunction with stairs and shall be painted or stained the same color as the stairways.

(e) Canopies or roofs are not permitted on stairways or landings.

(f) Stairways shall be located in the most visually inconspicuous portion of any lot. Vegetative plantings shall be used to screen the stairway from the river.

(g) Stairways shall be anchored and supported with pilings or footings.

(h) No construction shall begin until the applicant has submitted a plan for the stairway to the local enforcement official showing all necessary construction data including location, design, dimensions, color, construction materials and other pertinent information. The plan shall contain a certification by a registered professional engineer or architect that the stairway components are securely anchored to prevent them from shifting and from causing accelerated erosion.

(11) VEGETATIVE MANAGEMENT PROVISIONS. The vegetation shall be managed to maintain the essential character, quality and density of existing growth. Compatible species of vegetation shall be used for replacement or new plantings. Vegetation shall effectively screen lifts and stairs within 5 years, otherwise the lift and stairs shall be removed.

(a) On lands within 200 feet of the ordinary highwater mark and 40 feet landward of the bluffline, the following standards shall apply.

1. Removal of trees and shrubs is not permitted.

2. The above cutting provisions shall not prevent:

a. The removal of diseased or insect infested trees, or of rotten or damaged trees that present safety hazards.

b. Pruning of trees or the cutting of shrubs, understory vegetation bushes, grasses or from harvesting nonwood fiber crops.

c. The practice of forestry on lands enrolled under the woodland tax law or forest crop law (ch. 77, Stats.) as prescribed in a department approved forest management plan. Modifications to commonly accepted silvicultural methods will be prescribed by the department forester where necessary to protect the esthetic values of the area.

(b) Vegetative cutting elsewhere in the lower St. Croix river district may be conducted only where it is accessory to a permitted or conditionally permitted activity.

(12) GRADING AND FILLING PROVISIONS. (a) Any grading or filling of the natural topography in excess of that normally required for the construction of a structure or for normal yard maintenance shall be subject to all applicable state laws, the provisions for conditionally permitted activities, and in addition:

1. An application for a permit shall include a detailed plan and schedule of the earth moving activities, including a plan which shows how vegetative cover will be reestablished at what density and within what timeframe.

2. Approval of a plan shall be conditioned upon the following:

a. No filling or grading shall be allowed except for rock riprapping for shoreline protection on slopes greater than 12%.

b. Diversions, silting basins, terraces and other methods to trap sediments shall be used where necessary.

c. Fill shall be stabilized according to accepted engineering standards.

(b) Lagooning and dredging are prohibited unless authorized by permit from the department. Protection against erosion, sedimentation and impairment of fish and aquatic life shall be assured.

(c) The drainage or filling of wetlands is prohibited.

(13) COLOR OF STRUCTURES. The exterior color of structures including roofs, stairways, docks and lifts shall be natural wood and earth tones.

(14) SUBSTANDARD LOTS. Lots of record in the register of deeds office on the effective date of these rules or enactment of amendment to local ordinance which do not meet the requirements of NR 118.06 may be allowed as building sites provided that:

(a) The lot is in separate ownership from abutting lands, or, if lots in an existing subdivision are in common ownership, that each of the lots have at least one acre of net project area, and

(b) The proposed use conforms to the requirements of these rules and any underlying zoning or sanitary code requirements.

(15) **TRANSMISSION FACILITIES.** All new and updated transmission and distribution facilities shall be buried or shall share existing public or utility rights-of-way except the existing pipeline corridor in section 2, township 33 north, range 19 west, Polk county, Wisconsin.

(16) **SUBDIVISIONS.** In any new subdivision with river frontage there shall be one designated location for a stairway or lift.

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80; cr. (11) (a) 2. c., Register, May, 1982, No. 317, eff. 6-1-82.

NR 118.07 Administrative provisions. (1) **ADOPTION AND REVIEW OF ORDINANCES.** (a) Ordinances implementing the provisions of this chapter shall be adopted within 90 days of the promulgation of these rules.

(b) Upon adoption of an ordinance implementing these rules, the governmental unit shall submit 2 copies of the ordinance to the department of natural resources. The department shall review such ordinance and respond to its adequacy in meeting the rules.

(2) **REVIEW OF APPEALS IN UNINCORPORATED AREA.** (a) All appeals for conditionally permitted activities, amendments and variances shall be reviewed by the department and comments submitted to the appropriate governmental unit for inclusion into the hearing record.

(b) In objecting to an appeal, the department shall fully state, in writing the basis for its opposition and appear at the hearing to explain its position.

(c) Special exception permits, conditional use permits, amendments or variances shall not be approved over the objection of the department.

(d) A permit for a conditionally permitted activity in an unincorporated area shall not be issued over the written objection of a town board.

1. Such objection shall be presented in writing and in person at the public hearing of the conditionally permitted activity; and

2. Such objection shall explain where the proposed project is inconsistent with these rules, the lower St. Croix river protection act, or town zoning regulations.

(e) 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 such information or position.

1. This action by the county shall stay any construction by the applicant.

2. If at the end of 30 days from the date of the hearing, the department or the town has not changed their position, the hearing record shall be closed.

3. The department shall assist the governmental units in implementing and enforcing ordinances adopted pursuant to these rules.

History: Cr. Register, June, 1980, No. 294, eff. 7-1-80.