

Minnesota Attorney General: Administrative Rules Proceedings

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MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Dept of Natural Resources
(Agency or Board)

Regulation No. Chapter 22 NR 2200-2202 N.R.

Subject: Standards and Criteria for the Lower St Croix National Scenic Riverway in Minnesota

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CHAPTER 22: NR 2200-2202

STANDARDS AND CRITERIA FOR THE

LOWER ST. CROIX NATIONAL SCENIC RIVERWAY

IN MINNESOTA

NR 2200 GENERAL PROVISIONS

(a) STATEMENT OF POLICY

In order to protect and preserve the outstanding scenic, recreational, geologic, fish and wildlife, historic, cultural, and other similar values of the Lower St. Croix National Scenic Riverway in a manner consistent with the National Wild and Scenic Rivers Act (P.L. 90-542), and the Federal Lower St. Croix River Act (P.L. 92-560), the Commissioner of Natural Resources does hereby provide minimum standards and criteria for the management and development of the Lower St. Croix National Scenic Riverway in Minnesota, as authorized by Minnesota Statutes, Section 104.25, Subdivision 3.

(b) SCOPE

(1) To achieve the policies declared in NR 2200 (a), the Commissioner hereby sets forth minimum standards and criteria for the wise management and development of the Lower St. Croix National Scenic Riverway in NR 2200-2202 which include:

(aa) Designation of the St. Croix Riverway and establishing Rural and Urban Districts.

(bb) Regulations designating types of land uses compatible with the St. Croix Riverway.

(cc) Regulations providing minimum dimensions for the size and width of lots suitable for building sites.

(dd) Regulations governing the placement of structures in relation to shorelines, slopes, and blufflines.

(ee) Regulations governing the height and color of structures.

(ff) Regulations governing the alteration of natural shorelands and blufflands.

(gg) Regulations governing the type and placement of sanitary and waste disposal facilities.

(hh) Regulations governing the subdivision of shorelands and blufflands.

(ii) Regulations governing marinas and other intrusions in public waters.

(jj) Provisions for the administration and enforcement of St. Croix Riverway Ordinances.

(2) These standards and criteria provide minimum requirements for the Lower St. Croix National Scenic Riverway in Minnesota. Local units of government shall have 90 days from the date of promulgation of the Standards and Criteria for the Lower St. Croix National Scenic Riverway by the Commissioner to adopt St. Croix Riverway Ordinances which reflect local needs and existing conditions, and which are in compliance with these standards and criteria. On the date of adoption of a St. Croix Riverway Ordinance by the local unit of government after approval by the Commissioner, the Critical Area designation and the Interim Development Regulations are no longer in effect for lands and waters under their jurisdiction. If any local unit of government

fails to adopt an adequate St. Croix Riverway Ordinance within the 90 day period, the Commissioner may adopt such an ordinance for the local unit of government in the manner and with the effect specified in Minnesota Statutes, Section 105.485, Subdivisions 4 and 5. Nothing shall prevent the local units of government from adopting St. Croix Riverway Ordinances or applying other existing regulations or ordinances which are more protective than these minimum standards and criteria.

(c) JURISDICTION

(1) The Standards and Criteria for the Lower St. Croix National Scenic Riverway in Minnesota, as hereby set forth in NR 2200-2202 apply to both incorporated and unincorporated areas, public and private lands, and public waters within the riverway boundary established in the Lower St. Croix River Master Plan prepared pursuant to P.L. 92-560 and Minnesota Statutes, Section 104.25.

(2) All federal, state, local, and special governmental units, councils, commissions, boards, districts, agencies, departments, and other authorities shall exercise their powers so as to further the purposes of the Federal and State Lower St. Croix River Acts, the Master Plan, and these standards and criteria.

(d) DEFINITIONS

For the purpose of these standards and criteria, certain terms or words used herein shall be interpreted as follows: the word "shall" is mandatory, not permissive. All distances, unless otherwise specified, shall be measured horizontally.

(1) "Accessory Use" means a use subordinate to and serving the principal use on the same lot and customarily incidental thereto, such as vegetative cutting and grading and filling.

(2) "Agriculture" means the utilization of land for production of farm crops such as vegetables, fruit trees, grain, and other crops, as well as for the raising of poultry and domestic farm animals.

(3) "Appurtenance" means a structure subordinate to and serving the principal structure on the same lot and customarily incidental thereto such as garages, decks, essential services, signs, docks, and stairways and lifts, except that appurtenance does not include private water supply and sewage and waste disposal systems below the ground.

(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, becomes less than 12 percent; except that bluffline does not include the tops of slopes not visible from the river assuming no vegetative cover or the tops of slopes associated with minor undulations or roadside ditches, provided that the construction and presence of any proposed structure near the tops of such slopes will not cause erosion and that the structure will not be visible from the river. The location of the bluffline for any particular property shall be certified by a registered land surveyor or the local authority. More than one bluffline may be encountered proceeding away from the river or adjoining watershed channel. All setbacks required herein shall be applicable to each bluffline.

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

(6) "Channel" means a natural or artificial depression of perceptible extent, with a definite bed and banks to confine and conduct flowing water either continously or periodically.

(7) "Commissioner" means the Commissioner of Natural Resources.

(8) "Conservancy" means the practice or implementation of policies for the protection and preservation of the natural character of lands for their value to scenic enjoyment, wildlife, water and soil conservation, flood plain management, forestry, and other such purposes.

(9) "Dwelling Unit" means a residential accommodation which is arranged, designed, used, or intended for use exclusively as living quarters for one family.

(10) "Harbor" means a portion of a body of water along or landward of the natural shoreline deep enough for recreational watercraft navigation, and so situated with respect to shoreline features as to provide protection from winds, waves, ice, and currents. Natural harbors consist of bays and estuaries, while artificial harbors are constructed by dredging.

(11) "Local Authority" means that person or body of persons affiliated with a county or municipal government which has authority to take whatever action or decision these standards and criteria are referring to when the term is used, including but not limited to boards of commissioners, councils, boards of adjustment, planning commissions, zoning administrators, and tree inspectors.

(12) "Lot" means a parcel, piece, or portion of land designated by metes and bounds, registered land survey, plat, or other means and separated from other parcels or portions by said description that is recorded in the Office of the County Register of Deeds.

(13) "Marina" means an area of concentrated small craft mooring, where ancillary facilities may be provided for some or all of such services as fueling, sewage pumpout, boat launching, boat repair, and boat storage; except that marina does not mean temporary docks

associated with riparian residential development if the mooring area is of a size not to exceed the resource limitations of the site and the needs of the residents of the development.

(14) "Nonconforming Use" means any use of land established before the effective date of a St. Croix Riverway Ordinance which does not conform to the use restrictions of a particular zoning district. This should not be confused with substandard dimensions of a conforming use.

(15) "Ordinary High Water Mark" means a mark delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high water mark is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. In areas where the ordinary high water mark is not evident, setbacks shall be measured from the stream bank of the following water bodies that have permanent flow or open water: the main channel, adjoining side channels, backwaters and sloughs.

(16) "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.

(17) "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.

(18) "Public Waters" means any waters of the state which serve a beneficial public purpose as defined in Minnesota Statutes, Section 105.37, Subdivision 6.

(19) "Riverway Boundary" means a legally described line delineating the landward extent of the St. Croix Riverway.

(20) "St. Croix Riverway" means all lands and public waters within the riverway boundary subject to the Standards and Criteria for the Lower St. Croix National Scenic Riverway in Minnesota.

(21) "St. Croix Riverway Ordinance" means a set of regulations and any amendments thereto, adopted by a local unit of government in accordance with the Standards and Criteria for the Lower St. Croix National Scenic Riverway, which regulates the use of land within any particular Rural or Urban District.

(22) "Scenic Easement" means an interest in land, less than fee title, that limits the use of the land for the purpose of protecting the scenic, recreational, and natural characteristics of areas in the St. Croix Riverway. Unless otherwise expressly and specifically provided by mutual agreement of the parties, the easement shall be: perpetually held for the benefit of the people of Minnesota; specifically enforceable by its holder or any beneficiary; and binding on the holder of the servient estate, his heirs, successors, or assigns. Unless specifically provided by the parties, no such easement shall give the holder or any beneficiary the right to enter on the land except for enforcement of the easement.

(23) "Screening" means the presence of vegetation or topography which makes any structure on any property visually inconspicuous in summer months as viewed from the river.

(24) "Setback" means the minimum horizontal distance between any part of a structure and the ordinary high water mark or a bluffline.

(25) "Single Family Residential" means the use of a parcel of land for living accommodations including or intending to include a detached building containing one dwelling unit.

(26) "Slope" means all lands between the ordinary high water mark and the riverway boundary having an angle of ascent or descent of more than 12 percent from the horizontal.

(27) "Structure" means any building or appurtenance thereto, except transmission services.

(29) "Subdivision" means improved or unimproved land or lands which are divided for the purpose of ready sale or lease, or divided successively within a five-year period for the purpose of sale or lease, into three or more lots or parcels of less than five acres each, contiguous in area and which are under common ownership or control.

(29) "Substandard Structure" means any structure established before the effective date of a St. Croix Riverway Ordinance which is permitted within a particular zoning district but does not meet the structure setbacks or other dimensional standards of the ordinance.

(30) "Transmission Services" means electric power, telephone, and telegraph lines, cables, and conduits that are used to transport large blocks of power, convey intelligence, or transport material between two points. In the case of electrical power, this will generally mean 69 kilo-volts or more. For mains or pipelines, this means those conduits used to transport large amounts of gas, liquids, or solids in suspension. This should not be confused with distribution lines, cables, and conduits used to provide power, water, gas, or other essential services to utility company customers.

(31) "Variance" means any modification or variation of the dimensional standards of a St. Croix Riverway Ordinance where it is determined that, because of hardships, strict enforcement of the ordinance is impractical.

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

(33) "Watercourse" means a channel in which a flow of water occurs either continuously or intermittently. The term applies to either natural or artificially constructed channels.

(34) "Wetlands" means lands which are annually subject to periodic or continual inundation by water and commonly referred to as a bog, swamp, marsh, or slough.

(e) SEVERABILITY

The provisions of these standards and criteria shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any part.

NR 2201 LAND USE CONTROL PROVISIONS

(a) ST. CROIX RIVERWAY DESIGNATION AND ESTABLISHMENT OF DISTRICTS

(1) These standards and criteria designate a St. Croix Riverway coinciding with the riverway boundary established in the Lower St. Croix National Scenic Riverway Master Plan. These standards and criteria, as administered by local authorities through the adoption of St. Croix Riverway Ordinances, shall apply to all lands and waters in the St. Croix Riverway.

(2) For the purpose of these standards and criteria, there shall be two types of districts in the St. Croix Riverway because of the variation in development patterns:

(aa) Rural Districts, which consist of those lands in the St. Croix Riverway in:

(i) The unincorporated areas of Chisago County;

(ii) The unincorporated areas of Washington County;

(iii) Marine-on-St. Croix, north of the line separating Government Lots 5 and 6 in Section 6; and

(iv) Afton, south of the line separating Government Lots 4 and 5, extended west to the riverway boundary in Sections 22 and 23.

(bb) Urban Districts, which consist of those lands in the St. Croix Riverway in the Cities of:

(i) Taylors Falls;

(ii) Marine-on-St. Croix, south of the line described in NR 2201 (a) (2) (aa) (iii);

(iii) Stillwater;

(iv) Oak Park Heights;

(v) Bayport;

(vi) Lakeland;

(vii) Lakeland Shores;

(viii) Lake St. Croix Beach;

(ix) St. Mary's Point; and

(x) Afton, north of the line described in NR 2201 (a) (2) (aa) (iv).

(3) The Urban and Rural Districts as established on May 1, 1974 and herein shall not be changed by future incorporation, consolidation, or annexation.

(b) USE STANDARDS AND CRITERIA

The purpose of establishing standards and criteria for uses in the St. Croix Riverway shall be to protect and preserve existing natural, scenic, and recreational values, to maintain proper relationships between various land use types, and to prohibit new residential, commercial, or industrial uses that are inconsistent with the National Wild and Scenic Rivers Act, and the Federal and State Lower St. Croix River Acts.

(1) Permitted Uses

All structures associated with the following uses are permitted in the St. Croix Riverway subject to the dimensional requirements of a St. Croix Riverway Ordinance.

(aa) Conservancy

(bb) Agriculture

(cc) Single family residential

(dd) Governmental highway waysides, rest areas, information areas, and scenic overlooks.

(ee) Governmental resource management and interpretive activities.

(2) Accessory Uses

The following standards and criteria are provided to preserve vegetative and topographical screening, and to retard surface run-off, soil erosion, and nutrient loss.

(aa) Vegetative Cutting

(i) On lands within 200 feet of the ordinary high water mark in Rural Districts, 100 feet of the ordinary high water mark in Urban Districts, and 40 feet landward of blufflines and on slopes greater than 12 percent in all districts, there shall be no vegetative cutting of live trees or shrubs without a permit from the local authority. A permit may be issued only if:

(aaa) The cutting, including topping, involves trees less than 6 inches in diameter at breast height;

(bbb) The cutting, including topping, involves vegetation which is not screening any structure from view from the river; and

(ccc) The essential character, quality, and density of existing growths is preserved and continuous canopy cover is maintained; or

(ddd) Diseased trees are to be removed, and their removal is in the public interest; or

(eee) the cutting is necessary for the maintenance of transportation or utility rights-of-way.

(ii) A separate vegetative cutting permit is not required for the following; however, the vegetative cutting shall be accomplished in such a manner that the essential character, quality, and density of existing growths is preserved and continuous canopy cover is maintained as viewed from the river:

(aaa) Clearing the minimum area necessary for a structure, sewage disposal system, and private road and parking area, undertaken pursuant to a validly issued building permit.

(bbb) Maintenance trimming or pruning on any particular property or in transportation or utility rights-of-way.

(ccc) Vegetative cutting in areas of the St. Croix Riverway not covered under NR 2201 (b) (2) (aa) (i), provided that the cutting, including topping, involves vegetation which is not screening any structure from view from the river.

(bb) Grading and Filling

(i) Grading, filling, excavating, or otherwise changing the topography landward of the ordinary high water mark shall not be conducted without a permit from the local authority. A permit may be issued only if:

(aaa) Slopes greater than 12 percent are not altered where erosion and visual scars may result;

(bbb) Earthmoving, erosion, vegetative cutting, draining or filling of wetlands, and the destruction of natural amenities is minimized;

(ccc) The smallest amount of ground is exposed for as short a time as feasible;

(ddd) Temporary ground cover, such as mulch is used and permanent ground cover, such as sod, is planted;

(eee) Methods to prevent erosion and trap sediment are employed; and

(fff) Fill is stabilized to accepted engineering standards.

(ii) A separate grading and filling permit is not required for grading, filling, or excavating the minimum area necessary for a structure, sewage disposal system, and private road and parking area undertaken pursuant to a validly issued building permit. However, the standards and criteria of NR 2201 (b) (2) (bb) (i) shall be required as conditions of the building permit.

(3) Conditional Uses

(aa) In Urban Districts: uses permitted without a rezoning in specific zoning districts by existing local ordinances in effect

on May 1, 1974 may be allowed as conditional uses by the local authority, subject to the provisions of NR 2202 (b) (2). The local authority shall establish special zoning districts coinciding with the boundaries of zoning districts in effect on May 1, 1974 and shall specify standards and criteria by which conditional uses may be allowed within special zoning districts.

(bb) In Rural Districts: marinas may be allowed as conditional uses by the local authority, subject to the provisions of NR 2202 (b) (2), between the Boomsite Highway Wayside and Stillwater, and where provided in NR 2201 (f) (1) (bb). No other conditional uses shall be allowed in Rural Districts.

(4) Prohibited Uses

The following uses shall be prohibited in all districts;

(aa) Sand and gravel operations;

(bb) Junkyards;

(cc) Mobile home parks;

(dd) Downhill ski areas;

(ee) Marinas upstream from the Boomsite Highway Wayside; and

(ff) All uses not authorized in a St. Croix Riverway Ordinance.

(5) Nonconforming Uses

Prohibited uses in existence prior to the effective date of adoption of a St. Croix Riverway Ordinance are nonconforming uses and shall not be enlarged or expanded. Under authority permitted by law, local authorities may adopt provisions to regulate and control, reduce the number or extent of, or gradually eliminate conconforming uses. Local authorities shall provide for the elimination of sanitary

facilities inconsistent with NR 2201 (d) (2) (bb), (cc), and (ee) over a period of time not to exceed 5 years from the date of adoption of a St. Croix Riverway Ordinance or where required at an earlier date by existing county shoreland ordinances.

(6) Substandard Structures

All structures in existence prior to the effective date of adoption of a St. Croix Riverway Ordinance which are permitted within a particular zoning district but do not meet the structure setbacks or other dimensional standards of the ordinance are substandard structures and shall be subject to the following conditions:

(aa) Substandard structures and substandard sanitary facilities shall be allowed to continue.

(bb) In no instance shall the extent to which a structure or sanitary facility violates a setback standard be increased.

(cc) Any alteration or expansion of a substandard structure which increases the horizontal or vertical riverward building face shall not be allowed unless it can be demonstrated that the structure will be visually inconspicuous in summer months as viewed from the river.

(dd) If a substandard structure needs replacing due to destruction, deterioration, or obsolescence, such replacement shall comply with the dimensional standards of a St. Croix Riverway Ordinance.

(c) DIMENSIONAL STANDARDS AND CRITERIA

The purpose of establishing dimensional standards and criteria in the St. Croix Riverway shall be to protect riverway lands by means of acreage, frontage, setback and height requirements on development. Specific objectives shall be to maintain the esthetic integrity of the

St. Croix Riverway's dominant natural setting, to reduce the adverse effects of poorly planned shoreland and bluffland development, to provide sufficient space on lots for sanitary facilities, to minimize flood damage, to prevent pollution of surface and ground water, to minimize soil erosion, and to provide a natural buffer between the river and developed areas.

(1) Substandard Lots

Lots recorded in the office of the County Register of Deeds prior to May 1, 1974, that do not meet the requirements of NR 2201 (c) (2) (aa), may be allowed as building sites when:

(aa) The proposed use is permitted in the zoning district;

(bb) The lot has been in separate ownership from abutting lands since May 1, 1974;

(cc) It can be demonstrated that a proper and adequate sewage disposal system can be installed in accordance with the provisions of NR 2201 (d) (2); and

(dd) The dimensional standards of a St. Croix Riverway Ordinance are complied with to the greatest extent practicable. A St. Croix Riverway Ordinance may, consistent with these standards and criteria, set a minimum size for substandard lots or impose other restrictions on the development of substandard lots.

(2) Lot Size

(aa) For lots created after May 1, 1974, the minimum size shall be:

(i) In Rural Districts: not less than 2½ acres in area; not less than 200 feet in width at the

building line; and not less than 200 feet in width on the side abutting or nearest the river.

(ii) In Urban Districts:

(aaa) Where public sewer and water were available as of May 1, 1974: not less than 20,000 square feet in area; not less than 100 feet in width at the building line; and not less than 100 feet in width on the side abutting or nearest the river.

(bbb) Where public sewer and water were not available as of May 1, 1974: not less than 1 acre in area; not less than 150 feet in width at the building line; and not less than 150 feet in width on the side abutting or nearest the river.

(bb) Greater densities of development than those specified above may be permitted for planned cluster developments, subject to the provisions of NR 2201 (e) (4).

(3) Number of Dwelling Units

There shall not be more than one dwelling unit per lot, with the exception of planned cluster developments that shall be subject to the provisions of NR 2201 (e) (4).

(4) Structure Setbacks

The following minimum setbacks from the ordinary high water mark and blufflines shall apply to all structures and private roads and parking areas, except those specified as exceptions herein:

(aa) In Rural Districts: not less than 200 feet from the

ordinary high water mark and not less than 100 feet from a bluffline.

(bb) In Urban Districts: Not less than 100 feet from the ordinary high water mark and not less than 40 feet from a bluffline.

(cc) Exceptions to the minimum setbacks:

(i) In Rural Districts, structure setback from a bluffline may be reduced up to a minimum of 40 feet when it can be demonstrated that no change in the natural appearance of the shoreline, slope, and bluffline will occur and the structure will be visually inconspicuous in summer months as viewed from the river. In reviewing the proposed building site, the local authority, in cooperation with an agent of the Commissioner of Natural Resources, may determine that the structure setback can be varied to within the 40-100 foot range from a bluffline if the natural appearance of the shoreline, slope, and bluffline is preserved, and if the applicant agrees to donate a scenic easement to the state. Such scenic easement shall specify that on all land lying from the proposed building line to the river, or property line closest to the river, no desctruction, cutting, trimming, or removal of trees, shrubs, bushes, or plants, and no topographic changes of the natural landscape by excavation, drainage, filling, dumping or any other means shall occur without a written authorization from the Commissioner of Natural Resources.

(ii) Where a substandard setback pattern from the ordinary high water mark or a bluffline has already been established by existing principal dwelling unit structures on adjacent lots on both sides of the proposed building site, the setback of the proposed structure shall be the average setback of the existing dwelling units plus at least 40 feet, or the required minimum setbacks of the particular zoning district, whichever distance is less from the average setback line. This exception shall apply only to substandard lots which do not meet the minimum lot width requirements of NR 2201 (c) (2) (aa).

(iii) Developments subject to state permits which provide services to the public and which, by their nature, require location on or near public waters shall be subject to the conditions of the state permits as provided in NR 2201 . (d) and (f) through (i).

(iv) Temporary docks may be allowed as approved by federal, state, or local governments to extend into the water the minimum distance necessary to facilitate the launching or mooring of watercraft during the open water season.

(v) Signs may be allowed as approved by federal, state, or local governments which are necessary for the public health and safety. Signs may also be allowed that indicate areas that are

available or not available for public use. Outside the minimum setbacks within the St. Croix Riverway, signs that are otherwise lawful are permitted, provided they will be visually inconspicuous in summer months as viewed from the river.

(vi) Stairways and lifts to enable access from bluffland properties to the water on steep slopes may be allowed by the local authority, provided the disruption of vegetation and topography is kept to a minimum and the structure will be visually inconspicuous in summer months as viewed from the river.

(5) Placement of Structures

In addition to the setback requirements of NR 2201 (c) (4), placement of structures shall be controlled as follows:

(aa) Structures shall not be permitted on slopes greater than 12 percent, with the exception of stairways and lifts. Regardless of the number of blufflines on a given property, structures on slopes shall not be permitted. The physical alteration of slopes shall not be permitted for the purpose of overcoming this limitation.

(bb) When a floodplain ordinance exists, no structure shall be located in the floodway, as defined in Minnesota Statutes, Section 104.02. Outside the floodway, structures shall be placed at an elevation consistent with any applicable floodplain management ordinance. Local units of government lacking such ordinances shall adopt floodplain management regulations in accordance with Minnesota Statutes,

Section 104.04. Until such adoption, the elevation to which the lowest floor of a structure, including a basement, shall be placed, shall be determined after an evaluation of available flood information, and shall be consistent with the Statewide Standards and Criteria for Management of Flood Plain Areas in Minnesota.

(cc) The total area of all impervious surfaces on a lot shall not exceed 20 percent of the total lot area.

(6) Structure Height

The distance between the average ground level at the building line and the uppermost point of the structure shall not exceed 35 feet.

(7) Color of Structures

The exterior color of new structures, including roofs, shall be of earth or summer vegetation tones, unless completely screened from the river by topography. This standard is recommended when repainting and re-roofing existing structures visible from the river.

(d) SANITARY STANDARDS AND CRITERIA

In order to insure safe and healthful conditions, to prevent pollution and contamination of surface and ground waters, and to guide development compatible with the natural characteristics of blufflands, shorelands, and related water resources, St. Croix Riverway Ordinances shall control individual water supply and waste disposal systems with respect to location, construction, repair, use, and maintenance; and shall control commercial, agricultural, industrial and public waste disposal, and solid waste disposal sites.

(1) Water Supply

(aa) Any public or private supply of water for domestic purposes shall conform to Minnesota Department of Health Standards for water quality.

(bb) Private wells shall be placed in areas not subject to flooding and upslope from any source of contamination.

(2) Sewage and Waste Disposal

Any premises used for human occupancy shall be provided with an adequate method of sewage disposal to be maintained in accordance with acceptable practices.

(aa) Public or municipal collection and treatment facilities shall be used where available or feasible.

(bb) All private sewage and other sanitary waste disposal systems shall conform to applicable standards, criteria, rules, and regulations of the Minnesota Department of Health and the Pollution Control Agency, and any applicable local government regulations in terms of size, construction, use, and maintenance.

(cc) Location and installation of a septic tank and soil absorption system shall be such that, with reasonable maintenance, it will function in a sanitary manner and will not create a nuisance, endanger the quality of any domestic water supply, nor pollute or contaminate any waters of the state. In determining a suitable location for the system, consideration shall be given to the size and shape of the lot, slope of natural and finished grade, soil permeability, high ground water elevation, geology, proximity to existing or future water supplies, accessibility for maintenance, and possible expansion of the system.

(dd) Septic tank and soil absorption systems shall be set back the following minimum distances:

(i) In Rural Districts: not less than 200 feet from the ordinary high water mark and not less than 40 feet from a bluffline.

(ii) In Urban Districts: not less than 100 feet from the ordinary high water mark and not less than 40 feet from a bluffline.

(ee) Soil absorption systems shall not be allowed in the following areas for disposal of domestic sewage:

(i) Low, swampy areas, areas subject to recurrent flooding, or natural spring areas.

(ii) Areas where the highest known ground water table, bedrock, or impervious soil conditions are within four feet of the bottom of the system; and

(iii) Areas of ground slope which create a danger of seepage of the effluent onto the surface of the ground.

(ff) St. Croix Riverway Ordinances may require or allow alternative methods of sewage disposal, such as holding tanks, privies, electric or gas incinerators, biological and/or tertiary waste treatment plants, or land disposal systems, provided such facilities meet the standards, criteria, rules, and regulations of the Minnesota Department of Health and the Pollution Control Agency.

(gg) Public sewage disposal and commercial, agricultural, industrial, and solid waste disposal shall be subject to the standards, criteria, rules, and regulations of the Minnesota Pollution Control Agency.

(e) SUBDIVISION PROVISIONS

(1) Land Suitability

(aa) Land may be subdivided only where it is demonstrated by the applicant that all lots are suitable for residential development.

(bb) No land shall be subdivided which is held unsuitable by the local authority, or the Commissioner, for the proposed use because of flooding, inadequate drainage, soil and rock formations with severe limitations for development, severe erosion potential, unfavorable topography, inadequate water supply or sewage disposal capabilities, or any other feature likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision or of the community.

(2) Subdivision Standards

The provisions otherwise set forth in NR 2201 shall apply to all plats except planned cluster developments.

(3) Preliminary Plan Approval

Preliminary plans for all plats, including planned cluster developments, shall be approved by the Commissioner prior to their approval by the local authority.

(4) Planned Cluster Developments

A pattern of subdivision development which places dwelling units into compact groupings may be allowed when the proposed clustering provides a better means of preserving agricultural land, open space, woods, scenic views, wetlands, and other features of the natural environment than traditional subdivision development. Except for minimum setbacks and height limits, altered dimensional standards may be allowed as exceptions to St. Croix Riverway Ordinances for planned cluster developments provided:

(aa) The number of dwelling units allowed shall not exceed 50 percent more than the total number of dwelling units allowed if the development was based on the minimum lot size requirements for a single-family residential subdivision.

(bb) Open space is preserved, including at least 50 percent of the length of shoreland or bluffland frontage as viewed from the river on which the placement of structures is otherwise permitted in NR 2201 (c).

(cc) Temporary docks, if allowed, shall be centralized and of a size not to exceed the needs of the residents of the development.

(dd) Central sewage facilities, if allowed, shall meet the applicable standards, criteria, rules, or regulations of the Minnesota Department of Health, the Pollution Control Agency, and any applicable local government regulations.

(ee) The provisions otherwise set forth in NR 2201 shall apply to all planned cluster developments.

(5) Public Hearings Required

Public hearings shall be held in accordance with NR 2202 (d) (2) to consider all plats, including planned cluster developments.

(f) MARINA PROVISIONS

(1) District Location

(aa) New marinas may only be allowed between the Boomsite Highway Wayside and Stillwater and downstream from the northern city limits of Stillwater in Urban Districts.

(bb) Exception: for Rural Districts downstream from Stillwater, where marina proposals have water permits pending and/or environmental assessments or impact statements have been ordered under the state or federal Environmental Impact Statement process before the date of Notice of Hearing for these standards and criteria, the prohibition of marinas does not necessarily apply. These marina proposals may be permitted, modified or denied on the basis of water

permit hearings. This exception shall not be construed to limit or restrict any federal or state agency or court from basing a decision in any permit proceeding on the intent and purposes of the National Wild and Scenic Rivers Act (P.L. 92-560); Minnesota Statutes, Section 104.25, Subdivision 3; and any other applicable state or federal statutes and regulations.

(2) Design Standards

(aa) New marinas or marina expansions may be permitted only if they are in the public interest, their size does not exceed the resource limitations of the site, and their design involves utilization of existing harbors in the watercourse or construction of harbors landward of the watercourse.

(bb) The design of a marina shall allow for screening between the harbor and the main channel of the watercourse so as to make marina facilities visually inconspicuous in summer months as viewed from the river.

(cc) An alternative to use of the water surface for new marinas or marina expansions could be the provision of dry-docking facilities for the storage of boats during the open water season.

(3) Permit Requirements

No construction or development associated with a marina shall begin until all of the following authorizations have been obtained by the applicant:

(aa) Land Authorization

(i) Marinas must be listed as a conditional use in a St. Croix Riverway Ordinance.

(ii) For uses and structures above the ordinary high water mark associated with a marina, a public

hearing shall be held by the local authority to consider a marina as a conditional use in accordance with NR 2202 (d) (2). The local authority may approve or deny the marina as a result of the public hearing. If the local authority approves the marina, final issuance of the local permit shall be conditioned upon the granting of all state and federal permits required for a marina.

(bb) Water Authorization

(i) Minnesota Statutes, Section 105.42 requires a permit from the Commissioner to change the course, current, or cross-section of public waters wholly or partly within the State in the St. Croix Riverway by any means, including, but not limited to, filling, excavating, or placing of any materials in or on the beds of public waters.

(ii) Under Section 10 of the River and Harbor Act of 1899 and/or Section 404 of the Federal Water Pollution Control Act Amendments of 1972, a permit for structures and/or fill is also required from the Corps of Engineers.

(iii) If the local authority grants the conditional use permit, then prior to the issuance of a permit required by Minnesota Statutes, Section 105.42 for the construction, reconstruction, or expansion of a marina in the St. Croix Riverway,

the Commissioner may hold a public hearing as provided by Minnesota Statutes, Chapter 105.

(iv) Preservation of existing screening, or the establishment of adequate screening shall be a primary consideration of the Commissioner in reviewing marina permit applications in the St. Croix Riverway. Esthetic incompatibility with the purposes of these standards and criteria shall be adequate justification for denial of a permit application by the Commissioner.

(v) Shoreline protective structures authorized by permit, such as rock rip-rap revetments, shall be of natural earth color tones so as to be visually inconspicuous from the river.

(vi) Below the ordinary high water mark in the watercourse outside of harbors, no permanent pilings, piers, docks, levees, jetties, breakwaters, or the like shall be authorized for marinas.

(cc) Sanitary Authorization

All fueling and sanitary facilities associated with a marina shall conform to applicable standards, criteria, rules, and regulations of the Minnesota Department of Health and the Pollution Control Agency, and any applicable local government regulations in terms of location, size, construction, use, and maintenance.

(g) ALTERATIONS IN PUBLIC WATERS

(1) Changing the course, current, or cross section of public waters requires a permit from the Commissioner of Natural Resources

under Minnesota Stautes, Section 105.42. The standards in NR 2201 (f) (3) (bb) (iv) through (vi) shall apply to any alterations in public waters.

(2) Under Section 10 of the River and Harbor Act of 1899 and/or Section 404 of the Federal Water Pollution Control Act Amendments of 1972, a permit for any structure and/or fill is also required from the Corps of Engineers.

(3) Prior to the issuance of a permit for alterations in public waters, the Commissioner may hold a public hearing in the manner provided by Minnesota Statutes, Chapter 105.

(h) TRANSMISSION SERVICES

(1) A permit from the Commissioner is required pursuant to Minnesota Statutes, Sections 84.415 or 105.42 before transmission services may cross state-owned lands or public waters.

(2) Rules and Regulations of the Department of Natural Resources Relating to Utility Crossings of Public Lands and Waters, NR 5100 - 5102 shall apply to proposed transmission services crossings of state owned lands and public waters. The performance standards in these rules and regulations as they relate to transmission services shall also apply when securing approval from the local authority to cross other lands in the St. Croix Riverway.

(3) Prior to the issuance of permit for a transmission services crossing of state-owned lands or public waters in the St. Croix Riverway, the Commissioner may hold a public hearing in the manner provided by Minnesota Statutes, Chapter 105.

(i) PUBLIC ROADS

(1) A permit from the Commissioner is required pursuant to

Minnesota Statutes 105.42 before construction, reconstruction, removal, or abandonment of any road or railroad crossing of public waters. In reviewing permit applications required for road or railroad crossings, consideration shall be given to crossings with or adjacent to existing facilities, such as roads and utilities.

(2) Rules and Regulations of the Department of Natual Resources Relating to the Wild, Scenic, and Recreational Rivers System, NR 79 (j) (2) shall apply to road crossings of public waters. The performance standards in these rules and regulations as they relate to public roads shall also apply when securing approval from the local authority to cross other lands in the St. Croix Riverway.

(3) Prior to the issuance of a permit for a road crossing of public waters in the St. Croix Riverway, the Commissioner may hold a public hearing in the manner provided by Minnesota Statutes, Chapter 105.

NR 2202 ADMINISTRATION AND ENFORCEMENT

(a) JOINT EXERCISE OF POWERS

In order to facilitate more logical, consistent, and efficient administration of St. Croix Riverway Ordinances, counties and cities are encouraged, whenever feasible and practicable, to enter into joint powers agreements with adjacent or otherwise similarly situated local units of government for the purpose of jointly administering and enforcing St. Croix Riverway Ordinances pursuant to the procedures and authority of Minnesota Statutes, Sections 394.32 and 471.59.

(b) LOCAL PERMIT PROCEDURES

(1) Permitted Uses

In order to facilitate orderly and efficient administration and enforcement of St. Croix Riverway Ordinances, local units of government shall establish permit procedures for permitted and accessory uses and associated structures.

(2) Conditional Uses

In accordance with the provisions of NR 2201 (b) (3), conditional uses are subject to the following procedures:

(aa) Establishment of special zoning districts, conditional uses, and specific standards and criteria by which conditional uses may be allowed, shall be approved by the Commissioner prior to adoption of a St. Croix Riverway Ordinance; and

(bb) Public hearings shall be held in accordance with NR 2202 (d) (2) to consider conditional use permits.

(c) VARIANCES

Variances shall only be granted where there are particular hardships which make the strict enforcement of a St. Croix Riverway Ordinance impractical. Hardship means the proposed use of the property and associated structures in question cannot be established under the conditions allowed by a St. Croix Riverway Ordinance; the plight of the landowner is due to circumstances unique to his property, not created by the landowner after May 1, 1974; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute a hardship if a reasonable use for the property and associated structures exists under the conditions allowed by a St. Croix Riverway Ordinance. In addition, no variance shall be granted that would permit any use that is prohibited in a St. Croix Riverway Ordinance in which the subject property is located. Conditions may be imposed in the granting of variances to insure compliance and to protect adjacent properties and the public interest, especially in regard to the view from the river.

(d) PUBLIC HEARING PROCEDURES

(1) Public Hearings Required

In addition to public hearings required by Minnesota Statutes, Sections 375.51 and 462.357 prior to the adoption of a St. Croix Riverway Ordinance or amendments thereto, public hearings shall be held before any conditional use permit, any variance, and any proposal for a subdivision is approved or denied in the St. Croix Riverway by the local authority.

(2) Public Hearing Criteria for Conditional Use Permits, Variances and Subdivisions.

(aa) Requirements of the Applicant

The applicant shall submit sufficient copies of the following information to the local authority 30 days prior to the public hearing on the application for a conditional use, variance, or subdivision:

(i) Plat of survey showing the property location, boundaries, dimensions, elevations, blufflines, utility and roadway corridors, the ordinary high water mark, floodway, and floodplain;

(ii) The most recent aerial photo of the property with property lines drawn in;

(iii) Location of existing and proposed structures including height and setback dimensions;

(iv) Location of existing and proposed alterations of vegetation and topography;

(v) Adjoining water-oriented uses;

(vi) Suitability of the area for onsite waste disposal. Type, size, and location of the system shall be indicated. If a public or municipal wastewater collection and treatment system is to be utilized, the applicant must submit a written agreement from the municipality or sanitary authority indicating that the system has the capacity to handle the development;

(vii) Water supply system; and

(viii) An estimate of permanent and transient residents.

(bb) Review of Application

No less than 20 days prior to the public hearing, the local authority shall send copies of the above information to the following agencies for review and comment:

(i) Department of Natural Resources;

(ii) County or City Planning Commission;

(iii) Regional Planning Commission; and

(iv) Minnesota-Wisconsin Boundary Area Commission.

(cc) Hearing Record and Decision

The hearing record shall contain the comments of the agencies listed in NR 2202 (d) (2) (bb) and any other interested parties when such comments have been submitted. The decision by the local authority shall address the following items:

(i) Preserving the scenic and recreational resources of the St. Croix Riverway, especially in regard to the view from and use of the river;

(ii) The maintenance of safe and healthful conditions;

(iii) The prevention and control of water pollution, including sedimentation;

(iv) The location of the site with respect to floodways, floodplains, slopes, and blufflines.

(v) The erosion potential of the site based on degree and direction of slope, soil type, and vegetative cover;

(vi) Potential impact on game and fish habitat;

(vii) Location of the site with respect to existing or future access roads;

(viii) The amount of wastes to be generated and the adequacy of the proposed disposal systems;

(ix) The anticipated demand for police, fire, medical, and school services and facilities; and

(x) The compatibility of the proposed development with uses on adjacent land.

(dd) Forwarding the Decision

A copy of the final decision by the local authority on the application for a conditional use, variance, or subdivision shall be forwarded to the Commissioner within 10 days of such action.

(e) CERTIFYING CERTAIN ACTIONS

(1) In order to insure that the standards and criteria herein are not nullified by unjustified exceptions in particular cases, and to promote uniformity in the treatment of applications for such exceptions, a review and certification procedure is hereby established for certain land use decisions. These certain decisions consist of any decisions which directly affect the use of the land in the St. Croix Riverway, and are one of the following types of action:

(aa) Adopting or amending a St. Croix Riverway Ordinance regulating the use of land, including rezoning of particular tracts of land.

(bb) Granting a variance from the provisions of a St. Croix Riverway Ordinance which relates to the Dimensional Standards and Criteria of NR 2201 (c).

(2) No such action becomes effective unless and until the Commissioner has certified that the action complies with the intent of the National Wild and Scenic Rivers Act, the Federal and State Lower St. Croix River Acts and the Master Plan adopted thereunder, and

these standards and criteria. In determining the acceptability of the proposed action, the items in NR 2202 (d) (2) (cc) shall also be considered.

(3) Procedures for the Certification Process

(aa) A copy of all notices of any public hearings to consider adoption or amendment of a St. Croix Riverway Ordinance, or variance application shall be received by the Commissioner at least 20 days prior to such hearings to consider such actions. The notice shall include a copy of the proposed St. Croix Riverway Ordinance or amendments, or a description of the requested variance.

(bb) The local authority shall notify the Commissioner of its final decision on the proposed action within 10 days of the decision.

(cc) The Commissioner shall, no later than 30 days from the time he receives notice of the final decision, communicate to the local authority either:

(i) Certification of approval, with or without conditions; or

(ii) Notice of non-approval.

(dd) The action becomes effective when and only when either:

(i) The final decision taken by the local authority has previously received certification of approval from the Commissioner; or

(ii) The local authority receives certification of approval after its final decision; or

(iii) Thirty days have elapsed from the day the Commissioner receives notice of the final decision,

and the local authority has previously received from the Commissioner neither certification of approval nor notice of non-approval; or

(iv) The Commissioner certifies his approval after conducting a public hearing.

(ee) In the case of notice of non-approval of a St. Croix Riverway Ordinance, amendment, or variance, either the local authority or the applicant may, within 30 days of said notice, file with the Commissioner a demand for hearing. If the demand for hearing is not made within the 30 days, the notice of non-approval becomes final. If a public hearing is demanded:

(i) The hearing shall be held in the appropriate local community within 60 days of the demand for it but not before 2 weeks published notice. Notice and the conduct of the hearing and the allocation of costs of the hearing shall be accomplished in the same manner as provided in Minnesota Statutes, Section 105.44, Subdivisions 5 and 6.

(ii) Within 30 days after the hearing, the Commissioner shall either certify his approval of the proposed action, or deny it. His decision shall be based upon findings of fact made on substantial evidence found in the hearing record. If the Commissioner concludes that the proposed action satisfies the criteria of NR 2202 (e) (2), then he shall certify his approval; otherwise he shall deny it.

(f) IMPLEMENTATION AND ENFORCEMENT ASSISTANCE

The Department of Natural Resources shall provide assistance to the local units of government under the jurisdiction of the federal and state Lower St. Croix River Acts to implement and enforce St. Croix Riverway Ordinances adopted pursuant to these standards and criteria.

APPROVED AS TO FORM AND LEGALITY
MAR 15 1976 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 15 1976 - 4:15 pm
James Anderson Browe
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
MAR 15 1976
BY Edw Staudenmaier
AUTH. SIGNATURE
PS 4:30pm

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ROBERT L. HERBST, COMMISSIONER OF THE DEPARTMENT OF NATURAL RESOURCES, STATE OF MINNESOTA

- - - - - - -

In the Matter of the Adoption of the Proposed Guidelines and Standards for Local Zoning Ordinances for the Lower St. Croix National Scenic Riverway pursuant to Minnesota Statutes Sect. 104.25

ORDER FOR HEARING

- - - - - - -

To effectively implement Minnesota Stat. Sect. 104.25 (Supp. 1973), the Minnesota Commissioner of Natural Resources deems it necessary to consider the proposed rules captioned above pursuant to the authority vested in me by the same law.

NOW, THEREFORE, IT IS ORDERED this 25th day of November, 1975 that a public hearing on the proposed rules captioned above be held in the city of Oak Park Heights, Minnesota, in the V.F.W. Club 323, St. Croix Mall, December 29, 1975 at 2:00 P.M. and continuing at 7:00 P.M. at the same location and continuing at Center City, Minnesota, in the meeting room of the Chisago County Office Building, Main Street, on Tuesday, December 30, 1975 at 7:00 P.M. and continuing until all interested individuals and representatives of groups and associations have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of said hearings be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose, and to all concerned persons who are presently members of the Minnesota Legislature.

IT IS FURTHER ORDERED that the hearing officer who will conduct the hearing shall be Archie D. Chelseth, Assistant Commissioner for Planning of the Department of Natural Resources.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

ROBERT L. HERBST, Commissioner
Department of Natural Resources

Commissioner

10/22/75

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

COUNTY OF RAMSEY

In the Matter of the Adoption of the Proposed Guidelines and Standards for Local Zoning Ordinances for the Lower St. Croix National Scenic Riverway pursuant to Minnesota Statutes Sect. 104.25

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing will be held pursuant to Minn. Stat. Chapter 15 (1971) and Minn. Stat. Sect. 104.25, in the above-entitled matter in the City of Oak Park Heights, Minnesota, in the V.F.W. Club 323, St. Croix Mall, 5880 Omaha Avenue North, beginning on Monday, December 29, 1975, at 2:00 P.M. and continuing at 7:00 P.M. at the same location and continuing on Tuesday, December 30, 1975 at Center City, Minnesota, in the meeting room of the Chisago County Office Building, Main Street, at 7:00 P.M. and continuing until all interested individuals and representatives of groups and associations have had an opportunity to be heard. Data, statements, or arguments may be presented orally or in writing at the hearing. In addition, the hearing record will be kept open for the receipt of written statement through Wednesday, January 21, 1976. The mailing address for such statement is Archie D. Chelseth, Department of Natural Resources, Centennial Building, Saint Paul, Minnesota 55155. Mr. Chelseth, Assistant Commissioner for Planning and Chief Hearing Officer of the Department of Natural Resources, will be hearing officer in this matter.

Under Minnesota Statutes §§ 10A-01, subdivision 11 (1974), any individual representing persons or associations attempting to influence administrative action, such as promulgation of these rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. The State Ethics Commission is located at 410 State Office Building, Saint Paul, Minnesota 55155.

Commission EXHIBIT 2

K. A. K. DATE 12/29/75

State of Minnesota)
) ss.
County of Ramsey)

In the Matter of the Adoption of
the Proposed Guidelines and Standards
for Local Zoning Ordinances for the
Lower St. Croix National Scenic
Riverway pursuant to Minnesota Stat.
Sect. 104.25 (Supp. 1973)

CERTIFICATE

- - - - - - -

I hereby certify that the attached 440 labels and one sheet constitute the complete list of persons, associations, and other interested groups who as of 11:15 o'clock am, this 19th day of November, 1975, have requested pursuant to Minn. Stat. 1971, Section 15.0412, Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearings on proposed rules on the subjects captions above.

Joan Anderson Growe
SECRETARY OF STATE
ARLEN I. ERDAHL

By Neil Dion

Commission 4
A. A. DATE 12/29/75

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

BEFORE ROBERT L. HERBST
COMMISSIONER OF THE
DEPARTMENT OF NATURAL
RESOURCES

In the Matter of the Adoption of the Proposed Guidelines and Standards for Local Zoning Ordinances for the Lower St. Croix National Scenic Riverway pursuant to Minnesota Statutes Sect. 104.25

AFFIDAVIT

OF

MAILING

DAVID G. FLIPP being first duly sworn, deposes and says:

That on the 25th day of November, 1975, at the City of Saint Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of Saint Paul, a true and correct copy thereof, properly enveloped, and with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State, the Minnesota Congressional Delegation, concerned State Legislators, and appropriate governmental, civic, social, and private organizations within the Lower St. Croix Area.

DAVID G. FLIPP

Subscribed and sworn to before
me this 25th day of November, 1975.

HELEN A. MANAUER
Notary Public, Ramsey Co., Minn.
MY COMMISSION EXPIRES
Sept. 12, 1980

Commission EXHIBIT 3
K. A. K. DATE 12/07/75

DRAFT
FOR PUBLIC HEARING

CHAPTER 22: NR 2200-2202

STANDARDS AND CRITERIA FOR THE

LOWER ST. CROIX NATIONAL SCENIC RIVERWAY

IN MINNESOTA

NR 2200 GENERAL PROVISIONS

(a) STATEMENT OF POLICY

In order to protect and preserve the outstanding scenic, recreational, geologic, fish and wildlife, historic, cultural, and other similar values of the Lower St. Croix National Scenic Riverway in a manner consistent with the National Wild and Scenic Rivers Act (P.L. 90-542), and the Federal Lower St. Croix River Act (P. L. 92-560), the Commissioner of Natural Resources does hereby provide minimum standards and criteria for the management and development of the Lower St. Croix National Scenic Riverway in Minnesota, as authorized by Minnesota Statutes, Section 104.25, Subdivision 3.

(b) SCOPE

(1) To achieve the policies declared in NR 2200 (a), the Commissioner hereby sets forth minimum standards and criteria for the wise management and development of the Lower St. Croix National Scenic Riverway in NR 2200-2202 which include:

(aa) Designation of St. Croix Riverway Districts.

(bb) Regulations designating types of land uses compatible with the Lower St. Croix National Scenic Riverway.

(cc) Regulations providing minimum dimensions for the size

and width of lots suitable for building sites.

(dd) Regulations governing the placement of structures in relation to shorelines, slopes, and blufflines.

(ee) Regulations governing the height and color of structures.

(ff) Regulations governing the alteration of natural shorelands and blufflands.

(gg) Regulations governing the type and placement of sanitary and waste disposal facilities.

(hh) Regulations governing the subdivision of shorelands and blufflands.

(ii) Regulations governing marinas and other intrusions in public waters.

(jj) Provisions for the administration and enforcement of St. Croix Riverway ordinances.

(2) These standards and criteria provide minimum requirements for the Lower St. Croix National Scenic Riverway in Minnesota. Local units of government shall have 60 days from the date of promulgation of the Standards and Criteria for the Lower St. Croix National Scenic Riverway by the Commissioner to adopt St. Croix Riverway Ordinances which reflect local needs and existing conditions, and which are in compliance with these standards and criteria. On the date of approval of a Lower St. Croix Riverway Ordinance by the Commissioner after adoption by a local unit of government, the Critical Area designation and the Interim Development Regulations are no longer in effect for lands and waters under their jurisdiction. If any local unit of government fails to adopt an adequate St. Croix Riverway Ordinance within the 60 day period, the Commissioner may adopt such an ordinance for the local unit

of government in the manner and with the effect specified in Minnesota Statutes, Section 105.485, Subdivisions 4 and 5. Nothing shall prevent the local units of government from adopting St. Croix Riverway Ordinances which are more protective than these minimum standards and criteria.

(c) JURISDICTION

(1) The Standards and Criteria for the Lower St. Croix National Scenic Riverway in Minnesota, as hereby set forth in NR 2200-2202, apply to both incorporated and unincorporated areas, public and private lands, and public waters within the riverway boundary established in the Lower St. Croix River Master Plan prepared pursuant to P.L. 92-560 and Minnesota Statutes, Section 104.25.

(2) All federal, state, local, and special governmental units, councils, commissions, boards, districts, agencies, departments, and other authorities shall exercise their powers so as to further the purposes of the Federal and State Lower St. Croix River Acts, the Master Plan, and these standards and criteria.

(d) DEFINITIONS

For the purpose of these standards and criteria, certain terms or words used herein shall be interpreted as follows: the word "shall" is mandatory, not permissive. All distances, unless otherwise specified, shall be measured horizontally.

(1) "Accessory Use" means a use subordinate to and serving the principal use on the same lot and customarily incidental thereto, such as vegetative cutting, grading and filling, private roads and parking areas.

(2) "Agriculture" means the utilization of land for production of farm crops such as vegetables, fruit trees, grain, and other crops,

as well as for the raising of poultry and domestic farm animals.

(3) "Appurtenance" means a structure subordinate to and serving the principal structure on the same lot and customarily incidental thereto such as garages, decks, signs, docks, and stairways and lifts.

(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, becomes less than 12 percent. The location of the bluffline for any particular property shall be certified by a registered land surveyor, soil scientist, or certified soil tester. More than one bluffline may be encountered proceeding away from the river or adjoining watershed channel. All setbacks required herein shall be applicable to each bluffline.

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

(6) "Channel" means a natural or artifical depression of perceptible extent, with a definite bed and banks to confine and conduct flowing water either continuously or periodically.

(7) "Commissioner" means the Commissioner of Natural Resources.

(8) "Conservancy" means the practice or implementation of policies for the protection and preservation of the natural character of lands for their value to scenic enjoyment, wildlife, water and soil conservation, flood plain management, forestry, and other such purposes.

(9) "Dwelling Unit" means a residential accommodation which is arranged, designed, used, or intended for use exclusively as living quarters for one family.

(10) "Harbor" means a portion of a body of water along or landward of the natural shoreline deep enough for recreational watercraft navigation, and so situated with respect to shoreline features as to provide protection from winds, waves, ice, and currents. Natural harbors consist of bays and estuaries, while artificial harbors are constructed by dredging.

(11) "Local Authority" means that person or body of persons affiliated with a county or municipal government which has authority to take whatever action or decision these standards and criteria are referring to when the term is used, including but not limited to boards of commissioners, councils, boards of adjustment, planning commissions, zoning administrators, and tree inspectors.

(12) "Lot" means a parcel, piece, or portion of land designated by metes and bounds, registered land survey, plat, or other means and separated from other parcels or portions by said description that is recorded in the Office of the County Register of Deeds. A lot shall be considered to be an individual building site which shall be equipped with sanitary facilities.

(13) "Marina" means an area of concentrated small craft launching or mooring where ancillary facilities may be provided for some or all of such services as fueling, sewage pumpout, boat launching, boat repair, and boat storage.

(14) "Nonconforming Use" means any use of land established before the effective date of a St. Croix Riverway Ordinance which does not conform to the use restrictions of a particular zoning district. This should not be confused with substandard dimensions of a conforming use.

(15) "Ordinary High Water Mark" means a mark delineating the highest water level which has been maintained for a sufficient period of time to leave evidence upon the landscape. The ordinary high water mark is commonly that point where the natural vegetation changes from predominently aquatic to predominatly terrestrial. In areas where the ordinary high water mark is not evident, setbacks shall be measured from the stream bank of the following water bodies that have permanent flow or open water: the main channel, adjoining side channels, backwaters and sloughs.

(16) "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.

(17) "Public Roads" means federal, state, county, municipal, and township roads and highways which serve or are designed to serve flows of traffic between communities or other traffic generating areas.

(18) "Public Waters" means any waters of the state which serve a beneficial public purpose as defined in Minnesota Statutes, Section 105.37, Subdivision 6.

(19) "Riverway Boundary" means a legally described line delineating the landward extent of the St. Croix Riverway District.

(20) "St. Croix Riverway District" means all lands and public waters within the riverway boundary subject to the Standards and Criteria for the Lower St. Croix National Scenic Riverway.

(21) "St. Croix Riverway Ordinance" means a set of regulations and any amendments thereto, adopted by a local unit of government in accordance with the Standards and Criteria for the Lower St. Croix National Scenic Riverway, which regulates the use of land within the St. Croix Riverway District.

(22) "Scenic Easement" means an interest in land, less than fee title, that limits the use of the land for protecting the scenic, recreational, and natural characteristics of areas in the St. Croix Riverway District. Unless otherwise expressly and specifically provided by mutual agreement of the parties, the easement shall be: perpetually held for the benefit of the people of Minnesota; specifically enforceable by its holder or any beneficiary; and binding on the holder of the servient estate, his heirs, successors, or assigns. Unless specifically provided by the parties, no such easement shall give the holder or any beneficiary the right to enter on the land except for enforcement of the easement.

(23) "Screening" means the presence of vegetation or topography which makes any structure on any property visually inconspicuous as viewed from the river.

(24) "Setback" means the minimum horizontal distance between any part of a structure and the ordinary high water mark or a bluffline.

(25) "Single Family Residential" means the use of a parcel of land for living accommodations including or intending to include a detached building containing one dwelling unit.

(26) "Slope" means all lands between the ordinary high water mark and the riverway boundary having an angle of ascent or descent of more than 12 percent from the horizontal.

(27) "Structure" means any building or appurtenance thereto, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, or gas lines, including towers, poles, and other supporting appurtenances.

(28) "Subdivision" means improved or unimproved land or lands which are divided for the purpose of ready sale or lease, or divided successively within a five-year period for the purpose of sale or lease, into three or more lots or parcels of less than five acres each, contiguous in area and which are under common ownership or control.

(29) "Substandard Structure" means any structure or appurtenance established before the effective date of a St. Croix Riverway Ordinance which is permitted within a particular zoning district but does not meet the structure setbacks or other dimensional standards of the ordinance.

(30) "Transmission Services" means electric power, telephone, and telegraph lines, cables, and conduits that are used to transport large blocks of power, convey intelligence, or transport material between two points. In the case of electical power, this will generally mean 69 kilo-volts or more. For mains or pipelines, this means those conduits used to transport large amounts of gas, liquids, or solids in suspension.

(31) "Variance" means any modification or variation of the dimensional standards of the St. Croix Riverway Ordinance where it is determined that, because of hardships, strict enforcement of the Ordinance is impractical.

(32) "Visually Inconspicuous" means hard to see or not noticeable when viewed from the river.

(33) "Watercourse" means a channel in which a flow of water occurs either continuously or intermittently. The term applies to either natural or artificially constructed channels.

(34) "Wetlands" means lands which are annually subject to periodic or continual inundation by water and commonly referred to as a bog, swamp, marsh, or slough.

(e) SEVERABILITY

The provisions of these paragraphs shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any other part.

NR 2201 LAND USE CONTROL PROVISIONS

(a) ST. CROIX RIVERWAY DISTRICT DESIGNATIONS

(1) These standards and criteria designate a St. Croix Riverway District coinciding with the riverway boundary established in the Lower St. Croix National Scenic Riverway Master Plan. These standards and criteria, as administered by local authorities through the adoption of local ordinances, shall apply to all lands in the St. Croix Riverway District.

(2) For the purpose of these standards and criteria, there shall be two types of districts in the St. Croix Riverway District because of the variation in development patterns:

(aa) Rural Districts, which consist of those lands in the St. Croix Riverway District in:

(i) The unincorporated areas of Chisago County;

(ii) The unincorporated areas of Washington County;

(iii) Marine on St. Croix, north of the line separating Government Lots 5 and 6 in Section 6; and

(iv) Afton, south of the line separating Government Lots 4 and 5, extended west to the riverway boundary in Sections 22 and 23.

(bb) Urban Districts, which consist of those lands in the St. Croix Riverway District in the Cities of:

(i) Taylors Falls;

(ii) Marine-on-St. Croix, south of the line described in NR 2201 (a) (2) (aa) (iii);

(iii) Stillwater;

(iv) Oak Park Heights;

(v) Bayport;

(vi) Lakeland;

(vii) Lakeland Shores;

(viii) Lake St. Croix Beach;

(ix) St. Mary's Point; and

(x) Afton, north of the line described in NR 2201 (a) (2) (aa) (iv).

(3) The Urban and Rural Districts designated herein shall not be changed by future incorporation, consolidation, or annexation.

(b) USE STANDARDS AND CRITERIA

The purpose of establishing standards and criteria for uses in the St. Croix Riverway District shall be to protect and preserve existing natural, scenic, and recreational values, to maintain proper relationships between various land use types, and to prohibit new residential, commercial, or industrial uses that are inconsistent with the National Wild and Scenic Rivers Act, and the Federal and State Lower St. Croix River Acts.

(1) Permitted Uses

All structures and appurtenances associated with the following uses are permitted in the St. Croix Riverway District subject to the dimension standards and criteria in NR 2201 (c).

(aa) Conservancy

(bb) Agriculture

(cc) Single family residential

(dd) Governmental highway waysides, rest areas, information areas, and scenic overlooks.

(ee) Governmental resource management and interpretive activities.

(2) Accessory Uses

The following standards and criteria are provided to preserve vegetative and topographical screening, and to retard surface run-off, soil erosion, and nutrient loss.

(aa) Vegetative Cutting

(i) On lands within 200 feet of the ordinary high water mark in Rural Districts, 100 feet of the ordinary high water mark in Urban Districts, and 40 feet landward of blufflines in all districts, there shall be no vegetative cutting of live trees or shrubs without a permit from the local authority. A permit may be issued only if:

(aaa) The cutting, including topping, involves trees less than 6 inches in diameter at breast height;

(bbb) The cutting, including topping, involves vegetation which is not screening any structure from view from the river; and

(ccc) The essential character, quality, and density of existing growths is preserved and continuous canopy cover is maintained; or

(ddd) Diseased trees are to be removed, and their removal is in the public interest; or

(eee) The cutting is necessary for the maintenance of transportation or utility rights-of-way.

(ii) A separate vegetative cutting permit is not required for clearing the minimum area necessary for a building site, sewage disposal system, and private road and parking area undertaken pursuant to a validly issued building permit. However, the standards and criteria of NR 2201 (b) (2) (aa) (i) shall be required as conditions of the building permit.

(iii) Vegetative cutting elsewhere in the St. Croix Riverway District may be undertaken without a permit, provided that:

(aaa) The cutting, including topping, involves vegetation which is not screening any structure from view from the river; and

(bbb) The essential character, quality, and density of existing growths is preserved and continuous canopy cover is maintained.

(bb) Grading and Filling

(i) Grading, filling, excavating, or otherwise changing the topography landward of the ordinary high water mark shall not be conducted without a

permit from the local authority. A permit may be issued only if:

(aaa) The topographic change is necessary for private road and parking area purposes, or to prevent erosion, rather than motivated primarily by landscaping considerations.

(bbb) Earthmoving, erosion, vegetative cutting, draining or filling of wetlands, and the destruction of natural amenities is minimized;

(ccc) The smallest amount of ground is exposed for as short a time as feasible;

(ddd) Temporary ground cover, such as mulch is used and permanent ground cover, such as sod, is planted;

(eee) Methods to prevent erosion and trap sediment are employed; and

(fff) Fill is stabilized to accepted engineering standards.

(ii) A separate grading and filling permit is not required for grading, filling, or excavating the minimum area necessary for a building site, essential services, sewage disposal systems, and private road and parking area undertaken pursuant to a validly issued building permit. However, the standards and criteria of NR 2201 (b) (2) (bb) (i) shall be required as conditions of the building permit.

(cc) Private Roads and Parking Areas

All private roads and parking areas shall meet the setback requirements in NR 2201 (c) (4).

(3) Conditional Uses

(aa) Uses not listed as permitted or accessory uses in NR 2201 (b) (1) and (2) may be allowed in Urban Districts as conditional uses, subject to the provisions of NR 2202 (b) (2).

(bb) The following uses shall not be permitted as conditional uses in the St. Croix Riverway District; those uses existing upon adoption of St. Croix Riverway Ordinances shall become nonconforming uses and shall not be enlarged or expanded:

(i) Sand and gravel operations;

(ii) Junkyards;

(iii) Mobile home parks;

(iv) Downhill ski areas; and

(v) Marinas upstream from the northern city limits of Stillwater and in Rural Districts south of Stillwater, except where provided in NR 2201 (f) (1) (bb).

(4) Nonconforming Uses

All uses in existence prior to the effective date of adoption of a St. Croix Riverway Ordinance which do not conform to the use restrictions of the ordinance are nonconforming uses. Under authority permitted by law, local authorities may adopt provisions to regulate and control, reduce the number or extent of, or gradually eliminate nonconforming uses. Local authorities shall provide for the elimination of sanitary facilities inconsistent with NR 2201 (d)

(2) (bb), (cc), and (ee) over a period of time not to exceed 5 years from the date of adoption of a St. Croix Riverway Ordinance.

(5) Substandard Structures

All structure and appurtenances in existence prior to the effective date of adoption of a St. Croix Riverway Ordinance which are permitted within a particular zoning district but do not meet the structure setbacks or other dimensional standards of the ordinance are substandard structures. Substandard structures shall be allowed to continue. However, any alteration or expansion of a substandard structure or appurtenance which increases the cross-sectional area of the structure as viewed from the river shall not be allowed, nor in any case may the extent to which such structure violates a setback standard be increased.

(c) DIMENSIONAL STANDARDS AND CRITERIA

The purpose of establishing dimensional standards and criteria in the St. Croix Riverway District shall be to protect riverway lands by means of acreage, frontage, and setback requirements on development. Specific objectives shall be to maintain the esthetic integrity of the Lower St. Croix Riverway's dominant natural setting, to reduce the adverse effects of poorly planned shoreland and bluffland development, to provide sufficient space on lots for sanitary facilities, to minimize flood damage, to prevent pollution of surface and ground water, to minimize soil erosion, and to provide a natural buffer between the river and developed areas.

(1) Substandard Lots

Lots recorded in the office of the County Register of Deeds prior to May 1, 1974, that do not meet the requirements of NR 2201 (c) (2) (aa), may be allowed as building sites when:

(aa) The proposed use is permitted in the zoning district;

(bb) The lot has been in separate ownership from abutting lands since May 1, 1974;

(cc) It can be demonstrated that a proper and adequate sewage disposal system can be installed in accordance with the provisions of NR 2201 (d) (2); and

(dd) The measurements of the lot size and width are within 60 percent of the requirements of NR 2201 (c) (2) (aa).

(2) Lot Size

(aa) For lots created after May 1, 1974, the minimum size shall be:

(i) In Rural Districts: not less than 2½ acres in area; not less than 200 feet in width at the building line; and not less than 200 feet in width on the side abutting or nearest the river.

(ii) In Urban Districts:

(aaa) Where public sewer and water are available: not less than 20,000 square feet in area; not less than 100 feet in width at the building line; and not less than 100 feet in width on the side abutting or nearest the river.

(bbb) Where public sewer and water are not available: not less than 1 acre in area; not less than 150 feet in width at the building line; and not less than 150 feet in width on the side abutting or nearest the river.

(bb) Lot sizes smaller than those specified above may be permitted for planned cluster developments, subject to the provisions of NR 2201 (e) (4).

(3) Number of Dwelling Units

There shall not be more than one dwelling unit per lot, with the exception of planned cluster developments that shall be subject to the provisions of NR 2201 (e) (4).

(4) Structure Setbacks

The following minimum setbacks from the ordinary high water mark and blufflines shall apply to all structures, appurtenances, and private roads and parking areas, except those specified as exceptions herein:

(aa) In Rural Districts: not less than 200 feet from the ordinary high water mark and not less than 100 feet from a bluffline.

(bb) In Urban Districts: not less than 100 feet from the ordinary high water mark and not less than 40 feet from a bluffline.

(cc) Exceptions to the minimum setbacks:

(i) In Rural Districts, structure setback from the bluffline may be reduced to a minimum of 40 feet when it can be demonstrated that no change in the natural appearance of the shoreline, slope, and bluffline will occur and the structure will be visually inconspicuous in summer months as viewed from the river. The local authority, in cooperation with an agent of the Commissioner of Natural Resources, may determine that the structure setback can be varied to within the 40-100 foot

range from the bluffline if the natural appearance of the shoreline, slope, and bluffline is preserved, and if the applicant agrees to donate a scenic easement to the state. Such scenic easement shall specify that on all land lying from the proposed building line to the river, or property line closest to the river, no destruction, cutting, trimming, or removal of trees, shrubs, bushes, or plants, and no topographic changes of the natural landscape by excavation, drainage, filling, dumping or any other means shall occur without a written authorization from the Commissioner of Natural Resources.

(ii) Where a substandard setback pattern from the ordinary high water mark or a bluffline has already been established by existing principal dwelling unit structures on adjacent lots on both sides of the proposed building site, the setback of the proposed structure shall be the average setback of the existing dwelling units plus at least 40 feet. This exception shall apply only to substandard lots which do not meet the minimum lot width requirements of NR 2201 (c) (2) (aa).

(iii) Developments subject to state permits which provide services to the public and which, by their nature, require location on or near public

waters shall be subject to the conditions of the state permits as provided in NR 2201 (f) through (i).

(iv) Temporary docks may be allowed as approved by federal, state, or local governments during the open water season to extend into the water the minimum distance necessary to facilitate the launching or mooring of watercraft.

(v) Signs may be allowed as approved by federal, state, or local governments which are necessary for the public health and safety. Signs may also be allowed that indicate areas that are available or not available for public use. Outside the minimum setbacks within the St. Croix Riverway District, signs that are otherwise lawful are permitted, provided they will be visually inconspicuous in summer months as viewed from the river.

(vi) Stairways and lifts to enable access from bluffland properties to the water on steep slopes may be allowed by the local authority, provided the disruption of vegetation and topography is kept to a minimum and the structure will be visually inconspicuous in summer months as viewed from the river.

(5) Placement of Structures

In addition to the setback requirements of NR 2201 (c) (4),

placement of structures shall be controlled as follows:

(aa) Structures shall not be permitted on slopes, with the exception of stairways and lifts. Regardless of the number of blufflines on a given property, building on slopes shall not be permitted. The physical alteration of slopes shall not be permitted for the purpose of overcoming this limitation;

(bb) When a floodplain ordinance exists, no structure shall be located in the floodway, as defined in Minnesota Statutes, Section 104.02. Outside the floodway, structures shall be placed at an elevation consistent with any applicable floodplain management ordinance. Local units of government lacking such ordinances shall adopt floodplain management regulations in accordance with Minnesota Statutes, Section 104.04. Until such adoption, the elevation to which the lowest floor of a structure, including a basement, shall be placed, shall be determined after an evaluation of available flood information, and shall be consistent with the Statewide Standards and Criteria for Management of Flood Plain Areas in Minnesota.

(cc) The total area of all impervious surfaces on a lot shall not exceed 20 percent of the total lot area.

(6) Structure Height

The distance between the average ground level at the building line and the uppermost point of the structure shall not exceed 35 feet.

(7) Color of Structures

The exterior color of new structures, including roofs, shall be of earth or summer vegetation tones, unless completely screened from the river by topography. This standard is recommended when repainting and re-roofing existing structures visible from the river.

(d) SANITARY STANDARDS AND CRITERIA

In order to insure safe and healthful conditions, to prevent pollution and contamination of surface and ground waters, and to guide development compatible with the natural characteristics of blufflands, shorelands, and related water resources, St. Croix Riverway Ordinances shall control individual water supply and waste disposal systems with respect to location, construction, repair, use, and maintenance; commercial; agricultural; industrial; and public waste disposal.

(1) Water Supply

(aa) Any public or private supply of water for domestic purposes shall conform to Minnesota Department of Health Standards for water quality.

(bb) Private wells shall be placed in areas not subject to flooding and upslope from any source of contamination.

(2) Sewage and Waste Disposal

Any premises used for human occupancy shall be provided with an adequate method of sewage disposal to be maintained in accordance with acceptable practices.

(aa) Public or municipal collection and treatment facilities shall be used where available or feasible.

(bb) All private sewage and other sanitary waste disposal systems shall conform to applicable standards, criteria, rules, and regulations of the Minnesota Department of Health and the Pollution Control Agency, and any applicable local government regulations in terms of size, construction, use, and maintenance.

(cc) Location and installation of a septic tank and soil

absorption system shall be such that, with reasonable maintenance, it will function in a sanitary manner and will not create a nuisance, endanger the quality of any domestic water supply, nor pollute or contaminate any waters of the state. In determining a suitable location for the system, consideration shall be given to the size and shape of the lot, slope of natural and finished grade, soil permeability, high ground water elevation, geology, proximity to existing or future water supplies, accessibility for maintenance, and possible expansion of the system.

(dd) Septic tank and soil absorption systems shall be set back the following minimum distances:

(i) In Rural Districts: not less than 200 feet from the ordinary high water mark and not less than 40 feet from a bluffline.

(ii) In Urban Districts: not less than 100 feet from the ordinary high water mark and not less than 40 feet from a bluffline.

(ee) Soil absorption systems shall not be allowed in the following areas for disposal of domestic sewage:

(i) Low, swampy areas, areas subject to recurrent flooding, or natural spring areas.

(ii) Areas where the highest known ground water table, bedrock, or impervious soil conditions are within four feet of the bottom of the system; and

(iii) Areas of ground slope which create a danger of seepage of the effluent onto the surface of the ground.

(ff) St. Croix Riverway Ordinances may require or allow alternative methods of sewage disposal, such as holding tanks, privies, electric or gas incinerators, biological and/or tertiary waste treatment plants, or land disposal systems, provided such facilities meet the standards, criteria, rules, and regulations of the Minnesota Department of Health and the Pollution Control Agency.

(gg) Public sewage disposal and commercial, agricultural, industrial, and solid waste disposal shall be subject to the standards, criteria, rules, and regulations of the Minnesota Pollution Control Agency.

(e) SUBDIVISION PROVISIONS

(1) Land Suitability

(aa) Land may be subdivided only where it is demonstrated by the applicant that all lots are suitable for residential development.

(bb) No land shall be subdivided which is held unsuitable by the local authority, or the Commissioner, for the proposed use because of flooding, inadequate drainage, soil and rock formations with severe limitations for development, severe erosion potential, unfavorable topography, inadequate water supply or sewage disposal capabilities, or any other feature likely to be harmful to the health, safety, or welfare of future residents of the proposed subdivision of the community.

(2) Subdivision Standards

The provisions otherwise set forth in NR 2201 shall apply to all plats except planned cluster developments.

(3) Preliminary Plan Approval

Preliminary plans for all plats, including planned cluster developments, shall be approved by the Commissioner prior to their approval by the local authority.

(4) Planned Cluster Developments

A pattern of subdivision development which places dwelling units into compact groupings may be allowed when the proposed clustering provides a better means of preserving agricultural land, open space, woods, scenic views, wetlands, and other features of the natural environment than traditional subdivision development. Except for minimum setbacks and height limits, altered dimensional standards may be allowed as exceptions to St. Croix Riverway Ordinances for planned cluster developments provided:

(aa) The number of dwelling units allowed shall not exceed 50 percent more than the total number of dwelling units allowed if the development was based on the minimum lot size requirements for a single-family residential subdivision.

(bb) Open space is preserved, including at least 50 percent of the length of shoreland or bluffland frontage on which the placement of structures is otherwise permitted in NR 2201 (c).

(cc) Temporary docks, if allowed, shall be centralized and of a size not to exceed the needs of the residents of the development.

(dd) Central sewage facilities may be allowed. If allowed, such facilities shall meet the applicable standards, criteria, rules, or regulations of the Minnesota Department of Health and the Pollution Control Agency.

(ee) The provisions otherwise set forth in NR 2201 shall apply to all planned cluster developments.

(5) Public Hearings Required

Public hearings shall be held in accordance with NR 2202 (d) (2) to consider all plats, including planned cluster developments.

(f) MARINA PROVISIONS

(1) District Location

(aa) New marinas may only be allowed downstream from the northern city limits of Stillwater in Urban Districts.

(bb) Exception: for Rural Districts downstream from Stillwater, where marina proposals have water permits pending and/or environmental assessments or impact statements have been ordered under the state or federal Environmental Impact Statement process before the date of Notice of Hearing for these standards and criteria, the prohibition of marinas does not necessarily apply. These marina proposals may be permitted, modified or denied on the basis of water permit hearings and/or environmental assessments or impact statements.

(2) Design Standards

New marinas or marina expansions may be permitted only if their design involves utilization of harbors in the watercourse or construction of harbors landward of the watercourse.

(aa) Utilization or construction of a harbor for the purpose of containing a marina may be desirable where such marina is in the public interest and where marina development would otherwise encroach into the main channel of the watercourse and create a negative visual impact as viewed from the river.

(bb) The preferred design of a harbor is a dogleg with the mooring area running parallel to the shoreline. This design allows for adequate screening between the harbor and the main channel of the watercourse.

(cc) The land area lying between the harbor and the main channel of the watercourse shall be utilized for open space purposes to preserve or provide adequate screening.

(dd) An alternative to use of the water surface for new marinas or marina expansions could be the provision of dry-docking facilities for the storage of boats during the open water season.

(3) Permit Requirements

No construction or development associated with a marina shall begin until all of the following authorizations have been obtained by the applicant:

(aa) Land Authorization

(i) Marinas must be listed as a conditional use in the St. Croix Riverway Ordinance.

(ii) For uses, structures, and appurtenances above the ordinary high water mark associated with a marina, a public hearing shall be held by the local authority to consider a marina as a conditional use in accordance with NR 2202 (d) (2). The local authority may approve or deny the marina as a result of the public hearing. If the local authority approves the marina, final issuance of the permit shall be withheld until all state and federal permits required for a marina are granted.

(bb) Water Authorization

(i) Minnesota Statutes, Section 105.42 requires a permit from the Commissioner to change the course, current, or cross-section of public waters wholly or partly within the State in the St. Croix Riverway District by any means, including, but not limited to, filling, excavating, or placing of any materials in or on the beds of public waters.

(ii) Under Section 10 of the River and Harbor Act of 1899 and/or Section 404 of the Federal Water Pollution Control Act Amendments of 1972, a permit for structures and/or fill is also required from the Corps of Engineers.

(iii) If the local authority grants the conditional use permit, then prior to the issuance of a permit required by Minnesota Statutes, Section 105.42 for the construction, reconstruction, or expansion of a marina in the St. Croix Riverway District, the Commissioner may hold a public hearing as provided by Minnesota Statutes, Chapter 105.

(iv) Preservation of existing screening, or the establishment of adequate screening shall be a primary consideration of the Commissioner in reviewing marina permit applications in the St. Croix Riverway District. Esthetic incompatibility with the purposes of these standards and criteria shall be adequate justification for denial of a permit application by the Commissionr.

(v) Shoreline protective structures authorized by permit, such as rock rip-rap revetments, shall be of natural earth color tones so as to be visually inconspicuous from the river.

(vi) Below the ordinary high water mark in the watercourse outside of harbors, no permanent pilings, piers, docks, levees, jetties, breakwaters, or the like shall be authorized for marinas.

(cc) Sanitary Authorization

All fueling and sanitary facilities associated with a marina shall conform to applicable standards, criteria, rules, and regulations of the Minnesota Department of Health and the Pollution Control Agency, and any applicable local government regulations in terms of location, size, construction, use, and maintenance.

(g) ALTERATIONS IN PUBLIC WATERS

(1) Changing the course, current, or cross section of public waters requires a permit from the Commissioner of Natural Resources under Minnesota Statutes, Section 105.42. The standards in NR 2201 (f) (3) (bb) (iv) through (vi) shall apply to any alterations in public waters.

(2) Under Section 10 of the River and Harbor Act of 1899 and/or Section 404 of the Federal Water Pollution Control Act Amendments of 1972, a permit for any structure and/or fill is also required from the Corps of Engineers.

(3) Prior to the issuance of a permit for alterations in public waters, the Commissioner may hold a public hearing in the manner provided by Minnesota Statutes, Chapter 105.

(h) TRANSMISSION SERVICES

(1) A permit from the Commissioner is required pursuant to Minnesota Statutes, Sections 84.415 or 105.42 before transmission services may cross state-owned lands or public waters.

(2) Rules and Regulations of the Department of Natural Resources Relating to Utility Crossings of Public Lands and Waters, NR 5100 - 5102 shall apply to proposed transmission services crossings of state owned lands and public waters. The performance standards in these rules and regulations as they relate to transmission services shall

also apply when securing approval from the local authority to cross other lands in the St. Croix Riverway District.

(3) Prior to the issuance of permit for a transmission services crossing of state-owned lands or public waters in the St. Croix Riverway District, the Commissioner may hold a public hearing in the manner provided by Minnesota Statutes, Chapter 105.

(i) PUBLIC ROADS

(1) A permit from the Commissioner is required pursuant to Minnesota Statutes 105.42 before construction, reconstruction, removal, or abandonment of any road or railroad crossing of public waters. In reviewing permit applications required for road or railroad crossings, primary consideration shall be given to crossings with or adjacent to existing facilities, such as roads and utilities.

(2) Rules and Regulations of the Department of Natural Resources Relating to the Wild, Scenic, and Recreational System, NR 79 (j) (2) shall apply to public road crossings of public waters. The performance standards in these rules and regulations as they relate to public roads shall also apply when securing approval from the local authority to cross other lands in the St. Croix Riverway District.

(3) Prior to the issuance of a permit for a public road crossing of public waters in the St. Croix Riverway District, the Commissioner may hold a public hearing in the manner provided by Minnesota Statutes, Chapter 105.

NR 2202 ADMINISTRATION AND ENFORCEMENT

(a) JOINT EXERCISE OF POWERS

In order to facilitate more logical, consistent, and efficient administration of St. Croix Riverway Ordinances, counties and cities

are encouraged, whenever feasible and practicable, to enter into joint powers agreements with adjacent or otherwise similarly situated local units of government for the purpose of jointly administering and enforcing St. Croix Riverway Ordinances pursuant to the procedures and authority of Minnesota Statutes, Sections 394.32 and 471.59.

(b) LOCAL PERMIT PROCEDURES

(1) Permitted Uses

In order to facilitate orderly and efficient administration and enforcement of St. Croix Riverway Ordinances, local units of government shall establish permit procedures for permitted and accessory uses and associated structures and appurtenances.

(2) Conditional Uses

Uses permitted in Urban Districts without a rezoning in specific zoning districts by existing local ordinances in effect prior to May 1, 1974 may be allowed as conditional uses by the local authority, subject to the following:

(aa) The local authority shall establish special zoning districts coinciding with the boundaries of the zoning districts in effect prior to May 1, 1974;

(bb) The local authority shall specify standards and criteria by which conditional uses may be allowed within special zoning districts;

(cc) Conditional uses shall not include those listed as non-permitted uses in NR 2201 (b) (3) (bb);

(dd) Establishment of special zoning districts, conditional uses, and specific standards and criteria by which conditional uses may be allowed, shall be approved by the Commissioner prior to

adoption of St. Croix Riverway Ordinances; and,

(ee) Public hearings shall be held in accordance with NR 2202 (d) (2) to consider conditional use permits.

(c) VARIANCES

Variances shall only be granted where there are particular hardships which make the strict enforcement of the St. Croix Riverway Ordinance impractical. Hardship means the proposed use of the property and associated structures in question cannot be established under the conditions allowed by the St. Croix Riverway Ordinance; the plight of the landowner is due to circumstances unique to his property, not created by the landowner after May 1, 1974; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone shall not constitute a hardship if a reasonable use for the property and associated structures exists under the conditions allowed by the St. Croix Riverway Ordinance. In addition, no variance shall be granted that would permit any use that is not allowed in the St. Croix Riverway Ordinance in which the subject property is located. Conditions may be imposed in the granting of variances to insure compliance and to protect adjacent properties and the public interest, especially in regard to the view from the river.

(d) PUBLIC HEARING PROCEDURES

(1) Public Hearings Required

In addition to public hearings required by Minnesota Statutes, Sections 375.51 and 462.357 prior to the adoption of a Lower St. Croix Riverway Ordinance or amendments thereto, public hearings shall be held before any conditional use permit, any variance, and any proposal for a subdivision is approved or denied in the St. Croix

Riverway District by the local authority.

(2) Public Hearing Criteria for Conditional Use Permits, Variances and Subdivisions.

(aa) Requirements of the Applicant

The applicant shall submit sufficient copies of the following information to the local authority 30 days prior to the public hearing on the application for a conditional use, variance, or subdivision:

(i) Plat of survey showing the property location, boundaries, dimensions, elevations, blufflines, utility and roadway corridors, the ordinary high water mark, floodway, and floodplain;

(ii) Aerial photo of the property with property lines drawn in;

(iii) Location of existing and proposed structures including height and setback dimensions;

(iv) Location of existing and proposed alterations of vegetation and topography;

(v) Adjoining water-oriented uses;

(vi) Suitability of the area for onsite waste disposal. Type, size, and location of the system shall be indicated. If a public or municipal wastewater collection and treatment system is to be utilized, the applicant must submit a written agreement from the municipality or sanitary authority indicating that the system has the capacity to handle the development;

(vii) Water supply system; and

(viii) An estimate of permanent and transient residents.

(bb) Review of Application

No less than 20 days prior to the public hearing, the local authority shall send copies of the above information to the following agencies for review and comment:

(i) Department of Natural Resources;

(ii) County or City Planning Commission;

(iii) Regional Planning Commission; and

(iv) Minnesota-Wisconsin Boundary Area Commission.

(cc) Hearing Record and Decision

The hearing record shall contain the comments of the agencies listed in NR 2202 (d) (2) (bb) and any other interested parties when such comments have been submitted. The decision by the local authority shall address the following items:

(i) Preserving the scenic and recreational resources of the Lower St. Croix National Scenic Riverway, especially in regard to the view from and use of the river;

(ii) The maintenance of safe and healthful conditions;

(iii) The prevention and control of water pollution, including sedimentation;

(iv) The location of the site with respect to floodways, floodplains, slopes, and blufflines.

(v) The erosion potential of the site based on degree and direction of slope, soil type, and vegetative cover;

(vi) Potential impact on game and fish habitat;

(vii) Location of the site with respect to existing or future access roads;

(viii) The amount of wastes to be generated and the adequacy of the proposed disposal systems;

(ix) The anticipated demand for police, fire, medical, and school services and facilities; and

(x) The compatibility of the proposed development with uses on adjacent land.

(dd) Forwarding the Decision

A copy of the final decision by the local authority on the application for a conditional use, variance, or subdivision shall be forwarded to the Commissioner within 10 days of such action.

(e) CERTIFYING CERTAIN ACTIONS

(1) In order to insure that the standards and criteria herein are not nullified by unjustified exceptions in particular cases, and to promote uniformity in the treatment of applications for such exceptions, a review and certification procedure is hereby established for certain land use decisions. These certain decisions consist of any decisions which directly affect the use of the land in the St. Croix Riverway District, and are one of the following types of action:

(aa) Adopting or amending a St. Croix Riverway Ordinance regulating the use of land, including rezoning of particular tracts of land.

(bb) Granting a variance from the provisions of the St. Croix Riverway Ordinance which relates to the Dimensional Standards and Criteria of NR 2201 (c).

(2) No such action becomes effective unless and until the Commissioner has certified that the action complies with the intent of the National Wild and Scenic Rivers Act, the Federal and State Lower St. Croix River Acts and the Master Plan adopted thereunder, and these standards and criteria. In determining the acceptability of the proposed action, the items in NR 2202 (d) (2) (cc) shall also be considered.

(3) Procedures for the Certification Process

(aa) A copy of all notices of any public hearings to consider adoption or amendment of St. Croix Riverway Ordinances, or variance applications shall be received by the Commissioner at least 20 days prior to such hearings to consider such actions. The notice shall include a copy of the proposed St. Croix Riverway Ordinance or amendments, or a description of the requested variance.

(bb) The local authority shall notify the Commissioner of its final decision on the proposed action within 10 days of the decision.

(cc) The Commissioner shall, no later than 30 days from the time he receives notice of the final decision, communicate to the local authority either:

(i) Certification of approval, with or without conditions; or

(ii) Notice of non-approval.

(dd) The action becomes effective when and only when either:

(i) The final decision taken by the local authority has previously received certification of approval from the Commissioner; or

(ii) The local authority receives certification of approval after its final decision; or

(iii) Thirty days have elapsed from the day the Commissioner receives notice of the final decision, and the local authority has previously received from the Commissioner neither certification of approval nor notice of non-approval; or

(iv) The Commissioner certifies his approval after conducting a public hearing.

(ee) In the case of notice of non-approval of a St. Croix Riverway Ordinance or amendments, or a variance, either the local authority or the applicant may, within 30 days of said notice, file with the Commissioner a demand for hearing. If the demand for hearing is not made within the 30 days, the notice of non-approval becomes final. If a public hearing is demanded:

(i) The hearing shall be held in the appropriate local community within 60 days of the demand for it but not before 2 weeks published notice. Notice and the conduct of the hearing and the allocation of costs of the hearing shall be accomplished in the same manner as provided in Minnesota Statutes, Section 105.44, Subdivisions 5 and 6.

(ii) Within 30 days after the hearing, the Commissioner shall either certify his approval of the proposed action, or deny it. His decision shall be based upon findings of fact made on substantial evidence found in the hearing record. If the

Commissioner concludes that the proposed action satisfies the criteria of NR 2202 (e) (2), then he shall certify his approval; otherwise he shall deny it.

(f) IMPLEMENTATION AND ENFORCEMENT ASSISTANCE

The Department of Natural Resources shall provide all possible assistance to the local units of government under the jurisdiction of the federal and state Lower St. Croix River Acts to implement and enforce St. Croix Riverway Ordinances adopted pursuant to these standards and criteria.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ROBERT L. HERBST
COMMISSIONER OF THE
DEPARTMENT OF NATURAL
RESOURCES, STATE OF
MINNESOTA

In the Matter of the Adoption
of the Proposed Guidelines and
Standards for Local Zoning
Ordinances for the Lower St.
Croix National Scenic Riverway
pursuant to Minnesota Statutes
Sect. 104.25.

STATEMENT OF NEED

The rules captioned above are required by Minnesota Statutes 1974, section 104.25, subdivision 3.

The lower St. Croix river is a relatively undeveloped scenic and recreational asset lying close to the largest densely populated area of Minnesota. It is the policy of the applicable federal and state wild and scenic river acts to preserve and protect this unique asset. The comprehensive master plan establishes a mixture of fee acquisition, scenic easement acquisition and zoning, as the method of maintaining the relatively undeveloped appearance.

These rules are necessary to supply the standards and criteria for the zoning aspect of the master plan. As directed by the enabling legislation, the rules establish uses, lot size, frontage, setbacks, and other requirements necessary to maintain the existing natural appearance of the shores.

Dated: February 23, 1976.

ROBERT L. HERBST, Commissioner
Department of Natural Resources

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ROBERT L. HERBST, COMMISSIONER OF THE DEPARTMENT OF NATURAL RESOURCES, STATE OF MINNESOTA

In the Matter of the Adoption of the Proposed Guidelines and Standards for Local Zoning Ordinances for the Lower St. Croix National Scenic Riverway pursuant to Minnesota Statutes Sect. 104.25

ORDER ADOPTING RULES

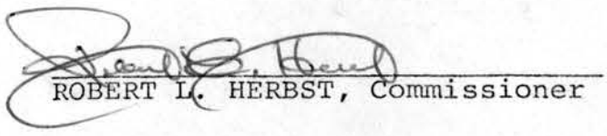
WHEREAS, public hearings on the above matter have been conducted pursuant to law in each affected county by Hearing Officer Archie D. Chelseth, Assistant Commissioner of the Department of Natural Resources to whom the matter was referred by me; and

WHEREAS, the Hearing Officer has reviewed the transcripts, exhibits and written statements which make up the record of those hearings, and has transmitted to me his findings of fact and recommended rule; and

WHEREAS, I have determined that the findings of the Hearing Officer are supported by the record, and that I fully concur with his findings and recommended rules, which are appended hereto and which I adopt as my own;

NOW, THEREFORE, IT IS ORDERED that the appended recommended rules, identified as Department of Natural Resources Rules 2200-2202 providing guidelines and standards for local zoning ordinances for the Lower St. Croix National Scenic Riverway, are adopted this 23 day of February, 1976 pursuant to authority vested in me by Minnesota Statutes, 1974, Section 104.25.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES



ROBERT L. HERBST, Commissioner

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the
Adoption of the Proposed Guidelines
and Standards For Local Zoning
Ordinances For the Lower St. Croix
National Scenic Riverway Pursuant
to Minnesota Statutes Section 104.25.

FINDINGS OF FACT
AND RECOMMENDATIONS
OF HEARING OFFICER

The above-entitled matter came on for hearing before Archie D. Chelseth, appointed hearing officer for these proceedings by order of Robert L. Herbst, Commissioner of Natural Resources, State of Minnesota, dated November 25, 1975. The hearings were conducted at Stillwater in Washington County, Minnesota on the afternoon and again on the evening of December 29, 1975, and at Center City in Chisago County on the evening of December 30, 1975, all pursuant to notice. Testimony from all present who asked to be heard was taken at each hearing, and a stenographic record made thereof. In addition to exhibits received at the hearings, written statements received through January 21, 1976, have been included in the record.

The record of the hearings having been reviewed and considered, the hearing officer now makes the following

FINDINGS OF FACT

1. The statutory authority for the proposed rules is contained in Minnesota Statutes, 1974, section 104.25, subdivision 3.

2. Notice of the hearings was given in accordance with Minn. Stats. 1974, section 15.0412 (Commissioner's exhibits).

3. The provisions of these rules are not new to the lower St. Croix. Substantially the same controls have been in effect since June, 1974, under the auspices of the state critical areas program, under the title "Interim Development Regulations." They were implemented then in that manner because delay in adopting the master plan (occasioned by the preparation of a federal EIS) blocked the Department of Natural Resources from proceedings under its statutory authority. (Minn. Stats. 1974, section 104.25, subd. 3; tr. 12-29 afternoon pps. 8, 16, 17, 47.) This means the basic provisions of the proposed rules have been in effect through two building seasons, and the shoreland owners and local administering governments given that much time to discover strengths and weaknesses. In light of that, and given the very extensive distribution of the notice of hearing (tr. 12-29 afternoon, p. 46), the light attendance at the hearings and the lack of general negative testimony assumedly indicates the proposed rules are generally understood and accepted.

4. The rules conform to the master plan guidelines. They are consistent with and similar to those already in effect for Wisconsin, thus assuring that both shores will be equally preserved. (Tr. 12-29 afternoon p. 46.)

5. NR 2200(a) is an accurate statement of the policies of the federal and state laws establishing the Lower St. Croix National Scenic Riverway and requiring these rules.

6. NR 2200(b)(1) adequately describes the content of the rules.

7. NR 2200(b)(2) allows the local governments 60 days after the adoption of these rules to conform their ordinances to them. Washington and Chisago counties and Lakeland, testified they need at least 120 days, and Stillwater Township and Marine say 60 days is not enough (Tr. 12-29 afternoon, pps. 39 and 63; 12-30 p. 35-36 and 41-42; and written statement #5). The Boundary Area Commission and Marine point out there is an urgency, because of the onset of the new building season. The Boundary Area Commission notes that drafting work can begin before the official date of promulgation (Tr. 12-29 afternoon, pps. 47-48 and 63). Chisago County misread the rule when it testified that the rule required 30 day notice of the local public hearing on the ordinance. The hearing officer finds 90 days is an appropriate time, allowing two months for drafting and one month for adoption, putting the ordinance into effect in June. The Department of Natural Resources and the Boundary Area Commission should do all they can to help the local governments achieve this tight timetable, particularly those governments having urban districts where conditional uses may be established.

8. Stillwater Township recommends that local ordinances be allowed to vary from these guidelines when local needs and conditions warrant. The hearing officer finds that such a change would defeat the evident legislative intent of binding all local governments to a uniform system of protection for the riverway.

9. The last sentence of NR 2200(b)(2) should be clarified by stating that more restrictive existing ordinances may be continued.

10. With regard to the "bluffline" definition, the reference to "soil scientist, or certified soil tester" should be removed (Tr. 12-29 afternoon, p. 40; written statement #5). If the bluffline location is in question, a surveyor can locate it. If the location is obvious, the local government's on-site inspection will suffice.

11. Stillwater Township and the state highway department (written statements #3 and #8) both point out that bluffline setback requirements should not be applied to minor undulations in the terrain -- roadside ditches, for example. The hearing officer finds the bluffline definition should be amended accordingly, but specific mathematical definitions of the exception should not be used because this is a matter where administrative judgment is needed. Further, as Stillwater Township indicates, there are some blufflines -- for instance those facing inland -- that have nothing to do with the view from the river. Such blufflines should be exempted from the definition with language drawn carefully to protect from erosion and not open loopholes.

12. In considering the testimony of Washington County regarding the definition of lot (Tr. 12-29 afternoon, p. 40), it becomes clear the last sentence of the definition is of no significance, and should be deleted.

13. The "marina" definition is not clear on its application to the kind of docking facility used at Croixside (see the slide referenced at Tr. 12-29 afternoon, p. 10),

which is a multi-craft temporary-dock mooring facility for the use of a group of shoreland owners, as for example what the rules call a cluster development. The Boundary Area Commission testifies that marina controls should be applied to commercial type or commercial scale operations (tr. 12-29 afternoon, pps. 40, 44, 48; 12-29 evening, p. 33). The hearing officer finds that the definition should be changed to exclude temporary dock facilities associated with riparian residential development and limited in size to that need and to the resource limitations of the site. The definition should not exclude multi-craft mooring facilities for the use of non-riparian members of a club or association.

14. The discussion of the "ordinary high water mark" below Stillwater was insufficiently definitive to warrant a refinement of the definition (tr. 12-29 afternoon, pp. 37, 12-29 evening p. 27; written statement #5).

15. Since NR 2201(i), on roads, adopts the provisions regarding public roads of the statewide wild and scenic river regulations, the definition of "public road" should likewise be conformed to those rules by striking "federal" and "state" from the definition (written statement #8).

16. As a matter of style, the St. Croix Riverway should not be called a "district," since there are "rural" and "urban" districts. Definitions (19) and (20) should be changed accordingly, and corresponding adjustments made throughout the rules.

17. A "scenic easement" limits use of the land for the purpose of protecting, etc. (written statement #3).

18. The "transmission services" definition needs an additional sentence excluding distribution lines, cables and conduits used to deliver essential services to customers (tr. 12-29 afternoon p. 58, 12-30 p. 36). The "appurtenance" definition should make explicit that it includes essential services. The "structure" definition exemption should be simplified to "transmission services."

19. The hearing officer agrees with the State Planning Agency that the "visually inconpicuous" definition should be limited to "in summer months." (Written Statement #6.) Also, the flat statement "not noticeable" should be changed to "not readily noticeable." The intent is that the screening need not be absolutely effective, so long as it is sufficient to hide the structure from the view of the casual observer not scanning that area of the shore intently.

20. The word "paragraphs" in the first line of NR 2200(e) - the severability provision - should be changed to "standards and criteria" (Tr. 12-29 afternoon, p. 64).

21. The critical area regulations established a freeze on land use districts as they related to incorporated and unincorporated areas as of May 1, 1974 (Tr. 12-29 afternoon, pps. 48-49). Since the district boundaries of these proposed rules are identical (Tr. 12-29 afternoon, p. 14), they should use the same cutoff date and NR 2201(a)(3) should be amended accordingly. This applies the same rational used in the substandard lot provision (NR2201(c)(1)). There was no testimony that the district boundaries should be

changed, or that there should be other types of districts.

22. The permitted uses listed in NR 2201(b)(1) are reasonable in light of NR 2201(b)(3) allowing further conditional uses.

23. The hearing officer agrees with Washington County's and the Boundary Area Commission's unchallenged recommendations (Tr. 12-29 afternoon pps. 40-41, 49) that "slopes greater than 12%" be added to the vegetative cutting coverage of NR 2201(b)(2)(aa)(i), for erosion control and scenic purposes.

24. Vegetation cutting subparagraph (ii) should make clear that permits are not required for yard maintenance (tr. 12-29 evening, pps. 26, 43-44; 12-29 afternoon, p. 41; written statement #5). Also, trimming in transportation and utility rights-of-way should not need a permit (written statements #8 and #13). The hearing officer also feels that (ii) and (iii) need clarification and recommends their language be replaced by the following:

> (ii) A separate vegetative cutting permit is not required for the following; however, the vegetative cutting shall be accomplished in such a manner that the essential character, quality and density of existing growths is preserved and continuous canopy cover is maintained as viewed from the river.
>
> (aaa) clearing the minimum area necessary for a structure, sewage disposal system, private road or parking area undertaken pursuant to a validly issued building permit;
>
> (bbb) maintenance trimming or pruning on any particular property or in transportation or utility rights-of way;
>
> (ccc) vegetative cutting in areas of the St. Croix Riverway not covered under NR 2201(b)(2)(aa)(i), provided that the cutting, including topping, involves vegetation which is not screening any structure from view from the river.

25. Though tight control on topographical modification is necessary to the policy of preservation, it is unwise to flatly rule out grading or filling for landscaping purposes (written statement #7), so NR 2201(b)(2)(bb)(i)(aaa) should be deleted. However, special protection for slopes should be added, for the same reason that vegetative cutting is limited on such lands (Tr. 12-29 afternoon, p. 41).

26. The hearing officer observes that there is nothing gained by listing private roads and parking areas as accessory uses since they are directly referenced in NR 2201(c)(4).

27. Since neither the Department of Natural Resources, Washington County or Stillwater Township objected, the hearing officer recommends the suggestions of Lakeland and the city of Stillwater that the area between Stillwater and the Boomsite be open to marinas (Tr. 12-29 evening pps. 44 and 51; written statement #5). If this option is objectionable to either Washington County or Stillwater Township, they need not establish such a conditional use (and of course they cannot if it was not a permitted or conditional use on May 1, 1974).

28. The rules can be improved organizationally by moving all but (dd) and (ee) of NR 2202(b)(2) to NR 2201(b)(3), rewording the latter as follows:

(3) Conditional Uses

> (aa) In Urban Districts: uses permitted without a rezoning in specific zoning districts by existing local ordinances in effect on May 1, 1974 may be allowed as conditional uses by the local authority, subject to the provisions of NR2202(b)(2). The local authority shall establish special zoning districts coinciding with the boundaries of zoning districts in effect on May 1, 1974 and shall specify standards and criteria by which conditional uses may be allowed within special zoning districts.

(bb) In Rural Districts: marinas may be allowed as conditional uses by the local authority, subject to the provisions of NR 2202(b)(2), between the Boomsite Highway Wayside and Stillwater, and where provided in NR2201(f)(1)(bb). No other conditional uses shall be allowed in Rural Districts.

(4) Prohibited Uses

The following uses shall be prohibited in all districts:

(aa) Sand and gravel operations;

(bb) Junkyards;

(cc) Mobile home parks;

(dd) Downhill ski areas;

(ee) Marinas, except where provided in NR 2201(b)(3)(aa) and (bb);

(ff) All other uses not authorized in a St. Croix Riverway Ordinance.

And accordingly the first sentence of Nonconforming Uses should read:

> Prohibited uses in existence prior to the effective date of adoption of a St. Croix Riverway Ordinance are non-conforming uses and shall not be enlarged or expanded.

29. It is necessary to the objection of preservation of the St. Croix Riverway topography that new sand and gravel operations be prohibited, even if the pit is owned by the Highway Department (written statement #8). This will not bar the completion of work in an existing authorized pit, or the removal of stockpiled material, and does not bar the continued operation of existing Highway Department maintenance sites.

30. In response to the State Planning Agency's question on the prohibition of mobile home parks, the hearing officer finds the provision reasonable in light of the lot size and width provisions of the rules.

31. The provision in NR 2201(b)(5) that local governments provide for eliminating non-conforming sanitary facilities in five years cannot be changed, for it is already required by state regulation on county shorelands, and will be shortly in municipalities (Tr. 12-29 evening pps. 34-35, 47-51; written statement #5). Stillwater and Lakeland should note that the violation of setback provisions does not make a system non-conforming. They should also consider the advantage of being able to require replacement of a failed system without having to prove a nuisance. The hearing officer does note that the five year period should not supersede earlier dates established by existing ordinances, and recommends amending the provision accordingly.

32. With regard to alteration or expansion of substandard structures, the hearing officer agrees with Clapp-Thomssen (written statement #1) that increases in size are alright if the structure is visually inconspicuous. This at least partially answers the valid concern of Mr. Warren (written statement #7). The hearing officer agrees with Washington County (Tr. 12-29 afternoon p. 41) that "riverward building face" is a better term than "cross-sectional area as viewed from the river."

33. In order to provide uniformity of treatment between zoning authorities, the rules need to make a statement on whether a replacement for a destroyed, deteriorated, or obsolete substandard structure can be located on the old site (Tr. 12-29 afternoon pps. 23-24, 62). Having reviewed the testimony of the Boundary Area Commission, the hearing officer finds that the rules should require the replacement structure to satisfy the provisions of NR 2201(c), the same as if it were a new structure on an undeveloped lot.

34. Stillwater, Lakeland and St. Mary's Point indicate the 60% provision of the substandard lot section would give them many unbuildable lots (Tr. 12-29 afternoon pps. 31-33; evening pps. 44-46; written statement #5). The Department of Natural Resources presumes the variance route is available to the owners of such lots (Tr. 12-30, p. 37). The hearing officer finds it appropriate that the section be amended by replacing the 60% provision with a local option provision.

35. The lot size and shape provisions, being the same as those of the critical area regulations, and having therefore been in effect for over one and one-half years, and having received no negative testimony in the record, are found to be reasonable and necessary.

36. The 20,000 square foot lots should be limited to areas which are sewered now (Tr. 12-29 afternoon p. 42, written statement #12).

37. For the same reasons given in finding 35, the setback distances are found reasonable and necessary.

38. As Washington County notes (Tr. 12-29 afternoon p. 42), for purposes of clarity the second line of NR 2201(c)(4)(cc)(i) should read up to a minimum of 40 feet, to indicate there is a range of locations.

39. Given the points raised by Washington County and Lakeland (Tr. 12-29 afternoon, p. 42; written statement #5), the exception for established setback patterns should be amended to indicate that the structure is to be located 40 feet back from the established pattern, or as allowed

by any other setback provision if less from the average setback line. Otherwise, the hearing officer finds the provision for setback behind the established pattern reasonable for the reasons given by the Department of Natural Resources and the Boundary Area Commission staff (Tr. 12-29 afternoon, pps. 27 and 51).

40. The requirement that the landowner donate a scenic easement as a condition of locating within 100 feet of a bluffline in a Rural District is a reasonable method of assuring that the trees or topography being relied upon for screening will not be removed or modified without state approval (Tr. 12-29 afternoon pps. 29-31; written statement #3).

41. The temporary dock exception to the structure setback provisions apparently needs rewording to make clearer that a new permit is not required each year (written statement #5).

42. In NR 2201(c)(5)(aa), it is more consistent with the rest of the regulations to replace "building" with "structures" (Tr. 12-30, p. 38).

43. The city of Stillwater should note (Tr. 12-29 evening pps. 46-47) that structures are prohibited in the floodway, which is consistent with their floodplain ordinance.

44. Washington County should note (Tr. 12-29 afternoon p. 43) that in a rural district a structure cannot be located in the 40-100 foot range if its height makes it visually conspicuous. The applicant could reduce building height in order to become visually inconspicuous.

45. The open space preservation provision for planned cluster developments should be amended by adding the phrase "as viewed from the river." (Tr. 12-30, pps. 39-40.) Washington County, which testified against allowing increased density in rural districts (Tr. 12-29 afternoon p. 43), need not adopt the provision, since they may be more restrictive.

46. Marina provision NR 2201(f)(1)(bb) should have a disclaimer added along the lines recommended by the Boundary Area Commission (written statement #10) and the reference to environmental statements should be removed per the State Planning Agency recommendation (written statement #6). The marina design standards provisions and (3)(aa)(ii) should be amended to reflect the recommendations of the Boundary Area Commission (Tr. 12-29 afternoon pps. 53-55).

47. NSP's concern (Tr. 12-29 afternoon pps. 57-59) that essential services be distinguished from transmission services and made a permitted use, is clarified by the recommendations of Finding #18. The performance standards of NR 79(i) are substantially the same as those in NR 5100-5102.

48. The hearing examiner agrees with the State Highway Department (written statement #8) that the word "primary" in NR2201(i)(1) is too limiting in that other locations might better protect the riverway environment.

49. The administrative requirements of NR2202 are reasonable and appropriate particularly in light of the many governmental units involved (two counties and ten cities). The discussion of the certification process revealed good arguments on both sides of the issue (Tr. 12-29 afternoon

p. 55; 12-30 pps. 37-38, 41, 45-46; written statement #5). The hearing officer finds that it is reasonable and necessary that departures from the provisions of these rules (rezonings and variances) require Department of Natural Resources approval. The hearing officer further recommends that in two to four years the Department of Natural Resources review with the local units of governments the need for continuing the certification process.

Based on the foregoing findings, the hearing officer makes the following

RECOMMENDATION

The Commissioner of Natural Resources should adopt the rule attached hereto. It is the rule as proposed for hearing, amended to conform with the findings, and also here and there rephrased or reworked for stylistic purposes.

Dated: February 19, 1974.

Archie D. Chelseth, Hearing Officer
Assistant Commissioner for Planning
Department of Natural Resources

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE ROBERT L. HERBST, COMMISSIONER OF THE DEPARTMENT OF NATURAL RESOURCES, STATE OF MINNESOTA

In the Matter of the Adoption of the Proposed Guidelines and Standards for Local Zoning Ordinances for the Lower St. Croix National Scenic Riverway pursuant to Minnesota Statutes Sect. 104.25.

STATEMENT OF COMPLIANCE

I, Special Assistant Attorney General A. W. Clapp, III, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

A. W. Clapp III

Special Assistant Attorney General

Dated: 2-23-76

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A. W. Clapp III
Special Assistant
Attorney General

March 16, 1976

NR 2200 - 2202