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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 03-054

#### Comments

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

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

a. Since this rule-making order repeals and recreates the major sections of ch. NR 118 and substantially modifies the remaining sections, it could be drafted as a repeal and recreation of the entire chapter.

b. The rule is very inconsistent in the term used to refer to local governments. In the first sentence of s. NR 118.02 (3), it refers to counties, cities, towns, and villages; in the remainder of the chapter, it refers variously to governmental units, local authorities, local governments, local units of government, and community, none of which are defined. A single term should be selected, defined, and used consistently in the rule. Note that s. 30.27 (3), Stats., refers to “counties, cities, villages and towns lying, in whole or in part, within the areas affected by the guidelines adopted under sub. (2).” Some variation of this phrase would be a suitable definition for whatever term is selected.

c. SECTION 3 of the rule repeals s. NR 118.03 (8), while SECTION 4 of the rule renumbers it. Clearly, one of these is an error.

d. The various treatments of the subsections of s. NR 118.03 should be accomplished in the numeric order of the subsections, to the extent possible. Once the major renumbering has created spaces, a single section should create s. NR 118.03 (2), (4), (5), and (15), followed by a section that repeals and recreates s. NR 118.03 (16), followed by a section that amends s. NR 118.03 (19) and (21), followed by a section that creates s. NR 118.03 (22) and (24). Note that this process is much simpler and less prone to errors if nothing is renumbered, and letters are

used to place the inserted units between existing units (e.g., s. NR 118.03 (2m)), as described in s. 1.03 (7), Manual. Also, less confusion would result if the entire chapter were repealed and recreated, as recommended above.

e. The title to s. NR 118.05 (1) (b) should be deleted since par. (a) does not have a title.

f. The definition of “setback” should be consolidated into an undivided subsection, in the same manner that the rule treats the definition of “net project area.”

g. The definition of “antenna” adds nothing to either the general understanding of the term or a standard dictionary definition, and so should be omitted.

h. Note that titles are, technically, not a part of the rule. Thus, the management zone names contained in the titles of the subsections of s. NR 118.04 should also be incorporated into the text. For example, s. NR 118.04 (1) (a) should read: “The river town management zone reflects ...” and s. NR 118.04 (1) (b) should read: “The river town management zone is established ...”.

i. Section NR 118.04 creates management zones, while other provisions refer variously to management zones and to districts. These should be made consistent.

j. In s. NR 118.06 (6) (a) and (b), all four occurrences the word “will” should be replaced by “shall”.

k. The last sentence of s. NR 118.06 (6) (d) should read: “This paragraph does not apply to docks, piers, stairways, or lifts.”

l. Section NR 118.06 (8) (intro.) should be numbered s. NR 118.06 (8) (a) and given a title such as *Goals of vegetation management*. The remaining paragraphs of this subsection should each be divided into an introduction and list of specific standards in numbered subdivisions. The forcing of these provisions into consolidated paragraphs results in numerous errors of grammar and punctuation. For example, what the rule numbers s. NR 118.06 (8) (a) should read:

(a) *Standards in all management zones*. The following standards apply in all management zones:

1. Vegetation in slope management zones ...
2. Vegetation may not be disturbed in such a way ...
3. etc.

The same comment applies to s. NR 118.06 (12) (a) and (b).

m. In s. NR 118.06 (8) (f), “sub. (8)” should be replaced by “this subsection.”

n. There are two provisions numbered s. NR 118.06 (12). The second of these should be renumbered s. NR 118.06 (13).

o. Most of the rule is written in the passive voice. While this works reasonably well in describing standards for ordinances, it does not work well for describing procedural requirements. Consequently, s. NR 118.07 should be rewritten using the active voice, clearly stating who has responsibility for each action. For example, s. NR 118.07 (1) (a) should begin: "Each local government (or whatever term is used) shall adopt an ordinance implementing the provisions of this chapter ...".

p. In s. NR 118.07 (1) (b), "thereto" should be replaced by "to an ordinance".

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

a. The rule frequently refers to "these rules." It should instead refer to "this chapter" or, preferably, provide a more precise reference to the rule provision that is intended. For example, s. NR 118.06 (4) should refer to "the dimensional standards in sub. (6)."

b. The definition of "St. Croix river district" should include a precise citation to the provision or provisions of the Federal Register in which the boundaries of the riverway are specified.

c. In s. NR 118.07 (2) (a), what public hearings are referred to? Required by what law? This should be identified by appropriate cross-references.

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

a. In the definition of "net project area," it appears that the word "roads" should be "road."

b. The current definition of "nonconforming use" appears superior to the definition created by the rule in that it clearly states the standards to which a use is being compared--the applicable local zoning ordinance. The new definition should be modified to clearly indicate whether it refers to conformity to the applicable local ordinance, conformity to s. NR 118.06, or conformity to some other standard.

c. Section NR 118.04 identifies only the northern and southern boundaries of the various management zones. Apparently, the eastern boundaries are the eastern boundary of the riverway and the western boundaries are the river itself. However, this should be stated explicitly, rather than being left to conjecture or deduction.

d. The last sentence of s. NR 118.05 (1) should read: "Uses permitted by a local zoning ordinance are permitted in the river town management zone."

e. In s. NR 118.05 (2) (b), what transmission services are meant--utilities, such as electric, gas, telephone and cable transmission, or others?

f. To be a conditionally permitted use under s. NR 118.05 (2) (h), does an activity have to be nature-oriented, educational, **and** nonprofit, or does **any** of those attributes qualify an activity? Depending on what is intended, the paragraph could be reworded as “Facilities that are nature-oriented, educational, and nonprofit” or “Facilities that are nature-oriented, educational, or nonprofit.”

g. In s. NR 118.06 (3) (b), it appears that a cabin that is 26 feet wide and placed 10 feet from the river, a part of which is therefore 35 feet from the river, would qualify for the allowed reconstruction or expansion. Is this result intended? Also, it appears that the word “structure” should be inserted after “nonconforming”.

h. In s. NR 118.06 (3) (b) 1. and (c) 1., it is not clear what is meant by “footprint”. Does it mean “square footage of the existing structure”? This should be clarified. Also, in par. (b) 1., does the “1,500 square feet” refer to the footprint or 25% of the footprint?

i. In s. NR 118.06 (3) (b) 4., “non-riverward” should be replaced by a more standard phrase, such as “not toward the river” or “not in the direction of the river.”

j. In s. NR 118.06 (3) (c), what is the difference between reconstruction and rebuilding? Does reconstruction, as used in pars. (b) and (c) include rebuilding? In common usage, these terms are basically synonymous. If the rule intends to distinguish between them, then it should give greater guidance.

k. Section NR 118.06 (8) (f) is confusing. What is meant by “shall require the recommendation of the local authority”?

l. In s. NR 118.06 (9), the notation “grading/filling” should be replaced by “grading or filling.”