



St. Croix Riverway Resource Guide for Local Governments

Prepared for: A View from the River - 4th St. Croix River Workshop - June 17, 2009

Lower St. Croix Riverway Laws

Federal

- National Wild & Scenic River Act: *Public Law 90-542*
- Federal St. Croix River Wild & Scenic River Act: *Public Law 92-560*

Minnesota

- Lower St. Croix Wild & Scenic River Act: *MN Statutes, Section 103F.351*
- Lower St. Croix National Scenic Riverway Rules: *MN Rules, Parts 6105.0300 - .0440*
- *Minnesota statutes and rules: <https://www.revisor.leg.state.mn.us/>*

Wisconsin

- Lower St. Croix Wild & Scenic River Act: *WI Statutes, Section 30.27*
- Lower St. Croix National Scenic Riverway Rules: *WI Administrative Code, Chapter NR 118*
- *Wisconsin statutes and administrative codes: <http://www.legis.state.wi.us/>*

Ordinary High Water (OHW)

Minnesota

The OHW level elevation in Minnesota is 675' for setbacks, and 680' for public water permits.

Wisconsin

The OHW mark elevation in Wisconsin is 680'. In special circumstances, this elevation may be reduced to 678.7' with DNR review and approval.

Variances & Conditional Use/Special Exception Permits

The following workshop handouts and resources provide information on the standards and criteria for reviewing variances and conditional use/special exception permits in each state:

- League of Minnesota Cities Handout - Zoning Guide for Cities Excerpt
- Government Training Services Handout - Land Use Planning Workshop Excerpt
- UW Extension/Center for Land Use Education Handout – March Workshop Presentation
- UW Extension/Center for Land Use Education – Handbooks for Zoning Boards and Planning Commissions are available at: <http://www.uwsp.edu/CNR/landcenter/pubs-handbooks.html>

Inquiries & Application Materials

The quality of your answer to riverway inquiries depends on the quality of the information provided to you. Ask enough questions to get all of the information you need before you answer. The same applies to land use applications. The following items can help to ensure timely, informed decisions:

- Site plan drawn to scale showing property lines, bluffline(s), steep slopes, wetlands, OHW and regional flood elevations, applicable setbacks, and the footprints of proposed structures.
- Grading and filling plan showing grading limits and pre- and post-construction contours.
- Erosion and sediment control plan with construction timeline and sequencing information.
- Stormwater management plan showing proposed impervious coverage and infiltration/retention measures, as well as a long-term maintenance and monitoring agreement.
- Vegetation management plan with a long-term maintenance and monitoring agreement.
- Elevation drawings, height measurements, color samples, and other design information.

Conditions on Riverway Permits & Approvals

Local governments have the authority to place conditions on permits and variance approvals to meet riverway standards, address negative impacts, and make long-term monitoring and enforcement easier. Conditions should be supported by the findings and conclusions and:

- 1) address expected harmful project impacts (*essential nexus*), and
- 2) be proportional to the extent of those impacts (*rough proportionality*).

Sample Conditions

The following are examples of conditions that can be used or modified to help achieve riverway goals. Many of these conditions are intended to assure compliance with approved plans, foster communication among all parties involved in the process/project, and help staff manage workloads.

Grading and filling/ erosion and sediment control/ stormwater management:

- Prior to commencing construction, the applicants must submit to the Zoning Administrator (ZA)/building official a construction timeline and contact information for all of the excavators, landscapers, architects, builders, sanitary installers, and other contractors working on the site.
- Prior to commencing construction, the applicants shall install erosion and sediment control measures in accordance with the approved plans. During construction, the smallest amount of bare ground shall be exposed for as short a time as possible. Temporary ground cover (such as mulch) and erosion and sediment control measures shall be maintained until permanent groundcover is established on all disturbed areas of the site.
- Prior to commencing construction, the applicants shall schedule an on-site pre-construction meeting with the ZA/building official to ensure that:
 - erosion and sediment control measures have been properly installed;
 - tree protection measures have been properly installed;
 - all other pre-construction conditions have been met;
 - all contractors involved are aware of the conditions of the approval pertinent to the construction and excavation; and
 - the applicants are aware of their roles and responsibilities as the property owners.

- Within 30 days of substantially completing construction, the applicants shall record an affidavit (or other appropriate legal instrument) referencing the decision/permit, the stormwater management plan, and an operation and maintenance agreement for the stormwater measures against the property, and provide a recorded copy of the affidavit and all referenced documents to the ZA/building official at this time. The intent is to make present and future owners aware of the responsibilities and limitations associated with this decision/permit.

Floodplain management:

- Prior to commencing construction, the applicants shall submit to the ZA/building official certification from a registered professional structural engineer that the proposed fill and retaining walls will properly support the proposed structures and will withstand pressure from floodwaters and wave action. Specifically, it should address all of the following items:
 - The retaining walls and fill shall withstand flood pressure, depths, velocities, uplift and impact forces, and other regional flood factors.
 - The retaining walls and fill shall be stable under the most severe conditions and the retaining walls shall withstand saturated soils that will exert significant pressure when the river level is down.
 - Soils behind the walls must be retained. Soils cannot be washed through the walls, and wave action over the top of the walls should not displace any materials.
 - The bases of the walls will be subject to significant erosive forces during flooding, especially when the flood waters come to the base or slightly higher and wave action is significant. Undermining of the walls could cause failure of the wall and fill material that is supporting the main structure.
- Within 30 days of completing construction, the applicants shall submit to the ZA/building official an Elevation Certificate verifying that the finished construction is above the regional flood elevation. (*Note: FEMA Flood Elevation Certificate is available at: <http://www.fema.gov/pdf/nfip/elvcert.pdf>*)
- Upon substantially completing the floodplain filling and grading project, the applicants must restore native trees and vegetation on the site to screen structures from the river consistent with riverway vegetation standards. (*Note: For all floodplain construction projects, consider other conditions to meet all applicable goals and standards.*)

Vegetation management/ screening:

- Prior to commencing construction, the applicants shall submit to and have approved by the ZA/building official a vegetation management plan showing the location of all existing trees to be removed and all proposed replacement trees in lands within the OHW mark setback, bluffline setback, and slope preservation zone. Trees and shrubs must be restored on these lands as necessary to maintain the current level of tree cover and diversity and to make all structures on the property visually inconspicuous from the river. (*Note: It is helpful to identify a minimum size for trees shown on the plan; require that the applicants identify the location, size, and species of all replacement trees; and provide applicants with native plant lists.*)
- Prior to commencing construction, the applicants shall install temporary fencing or other suitable barrier around the drip lines of all trees within and surrounding the construction site to protect them from damage and soil compaction caused by large equipment during construction. The applicants shall be responsible for maintaining and enhancing the current level of tree cover and diversity, and adding shrub cover on the site as necessary to ensure long-term screening of structures from the river, preserve wildlife habitat, and stabilize and protect the steep slopes to avoid erosion and sedimentation problems.
- The applicants shall be responsible for replacing any trees that eventually die as a result of construction, and for planting additional native trees, shrubs, and groundcover as determined necessary by the ZA/building official to meet the riverway vegetation standards.

- Within 30 days of completing the project, the applicants must record an affidavit (or other appropriate legal instrument) against the property describing the approved vegetation management plan and the maintenance and monitoring agreement for the vegetation with the County Register of Deeds. The intent is to make future owners aware of the responsibilities incurred in maintaining the vegetation. The applicants must submit a copy of the recorded affidavit to the ZA/building official at this time.
- All components of the proposed structure - roof, trim, siding, decks - must be earth-tone in color (or the color of summer vegetation) so as to be visually inconspicuous from the river.

Monitoring/enforcement:

- Prior to commencing construction, the applicants shall submit to the ZA/building official a compliance deposit equal to the application fee to be held by the city/county until all conditions have been met, at which time the deposit will be refunded in full.
- Within 30 days of completing construction or as soon as weather allows, the applicants shall submit to the ZA/building official record drawings of the site (or other acceptable form of certification from the project engineer) verifying that construction was completed in accordance with the approved plan.
- Within 30 days of completing construction or as soon as weather allows, the applicants shall submit to the ZA/building official photos of the completed construction site, including photos of the site as viewed from the river. *(Note: Photos from the river should be taken from a specified distance from the shoreline/OHW mark, and should be taken from three vantage points: upstream, straight on, and downstream. For the best results, photos from the river should be taken when the natural light is optimum for viewing the property.)*
- Any minor change or addition to the project, including but not limited to design of the project, shall require prior review and approval by the ZA/building official. Any major change or addition to the originally approved plan will have to go through the appropriate variance or conditional use/special exception approval process. *(Note: Timelines for commencing and completing construction are also helpful.)*

Other Resources

Nonpoint Source Pollution: <http://northlandnemo.org/>

Planting for Clean Water: <http://www.bluethumb.org/>

Rain Gardens: <http://www.dnr.state.wi.us/org/water/wm/dsfm/shore/documents/rgmanual.pdf>

Conserving Blufflands: http://files.dnr.state.mn.us/publications/waters/Conserving_Your_Blufflands.pdf

Protecting Waterfront Investments: <http://www.uwsp.edu/CNR/landcenter/Publications/waterfront.pdf>

St. Croix Treasures: <http://basineducation.uwex.edu/stcroix/ConCollaborative/StCroixTreasures.pdf>

Native Plant List: See workshop handout of native plant list for the riverway in Washington County.

Stairways and Lifts: See workshop handout of draft Minnesota DNR brochure.

Materials from all four St. Croix River workshops are available at:

http://www.dnr.state.mn.us/waters/watermgmt_section/wild_scenic/ws_rivers/workshops_2008-2009.html