Form 1100-001
(R 2/07)

NATURAL RESOURCES BOARD AGENDA ITEM

Item No. 3.A.3

SUBJECT: Authorization for public hearings on Chapter NR 115, Wis. Adm. Code, pertaining to Wisconsin's Shorleand Protection Program.

FOR: MAY **BOARD MEETING**

TO BE PRESENTED BY: Russ Rasmussen, Watershed Management

SUMMARY:

The Department, with assistance from the NR 115 Advisory Committee, drafted revisions to ch. NR 115 to meet the statutory objectives of the program, while providing certainty and flexibility to counties and property owners. Changes include adding definitions to the rule for clarity; requiring counties to set standards for multi-unit development, mobile home parks, and campgrounds; providing exemptions for certain activities from shoreland setback and shoreland vegetation standards and establishing impervious surface standards to replace the regulation of nonconforming structures with a standard based on the size and location of structures. These changes will significantly decrease the number of variances granted by counties, allowing certain activities to be allowed with a simple administrative permit by the county.

The proposed revisions to NR 115 are consistent with past Department policy and guidance, and Wisconsin case law. In many instances, the changes codify past guidance to counties. One major shift is present in the department's decision to regulate structures based on impervious surfaces. This shift in policy eliminates the traditional nonconforming regulations and based on past concerns raised by counties, comments received by the public at listening sessions and public hearings and direction received from the Natural Resources Board when the related ch. NR 118 was approved.

Past Department policy, based on Wisconsin common law, was that the goal of regulating nonconforming structures was to bring about ultimate compliance with the shoreland zoning ordinance. In most instances, this would require the removal of existing structures within 75 feet of the ordinary high-water mark. This proposal recognizes that these structures usually were built in compliance with the standards in place at the time of construction, and property owners may have substantial investments in the improvements on their property. This proposal still has the goal of ultimate compliance, but recognizes that the timeline for compliance has been extended.

RECOMMENDATION: Approval for authorization for hearings on NR 115. July/August hearings to be held in Green Bay, Pewaukee, Rhinelander, Rice Lake, Wausau, Tomah and Middleton.

LIST OF ATTACHED MATERIALS:

No	☐	Fiscal Estimate Required	Yes ☑	Attached
No	☐	Environmental Assessment or Impact Statement Required	Yes ☑	Attached
No	☐	Background Memo	Yes ☑	Attached

APPROVED:

Russell Rasmussen — April 20, 2007
Bureau Director, Date

[illegible] — 4/23/07
Administrator, Date

Randy [illegible] for Scott Hassett — 5-10-07
Secretary, Scott Hassett Date

cc: Laurie J. Ross - AD/5

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: April 23, 2007

TO: Natural Resources Board

FROM: Scott Hassett PSH

SUBJECT: Background Memo on Proposed Revision to ch. NR 115, Wisconsin's Shoreland Management Program

1. Why this rule revision being proposed?

a. What event or action triggered the proposal?
In 1997, a comprehensive Department study found that the minimum standards in ch. NR 115 provide only minimal protection of fish and wildlife habitat, natural scenic beauty and water quality. Many of the basic standards in ch. NR115 remain unchanged since their original adoption nearly 40 years ago. Based on extensive review of modern scientific literature about fish and wildlife habitat requirements, prevention and control of water pollution, and preservation of shore cover for natural scenic beauty, the study concluded that to meet the statutory objectives of the program, improved minimum standards are needed for shoreland zoning ordinances.[1]

In addition, counties across the state have expressed frustration with the current minimum standards found in ch. NR 115. The concerns of counties with existing standards include:

- Some standards are too vague or undefined, preventing consistent application across the state and in some cases reducing lake and stream protection.
- Other standards are inflexible, discouraging counties from adopting innovative regulatory programs.

Many property owners have also expressed frustration with the current minimum standards, including:

- The "50% rule" for nonconforming structures is not equitable.
- In certain situations, reduced setbacks or improvements to nonconforming structures should not require a variance.

b. What issues are addressed by this rule?
The proposed rule revisions address the issue of improving shoreland development standards to meet the statutory objectives of protecting water quality, fish and wildlife habitat, and natural scenic beauty, while providing counties and property owners with more certainty in some areas and appropriate flexibility in other areas when amending shoreland zoning ordinances or applying for local permits.

Numerous studies on shoreland development have found that setting structures back from the edges of lakes, rivers and wetlands creates a buffer that can help mitigate the environmental impact of structures and the surrounding development. The vegetation of buffers, including native trees, shrubs, wildflowers, and grasses, is crucial to help protect water quality, prevent flooding, provide fish and

[1] Bernthal, T. October 1997. Effectiveness of Shoreland Zoning Standards to Meet Statutory Objectives: A Literature Review with Policy Implications. Wisconsin Department of Natural Resources.

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wildlife habitat, and screen neighboring properties to ensure greater privacy and natural scenic beauty.

Since 1966, the number of dwellings along 235 northern Wisconsin lakes increased an average of 216 percent. The highest increase - 800 percent - in the number of new dwellings occurred on lakes 500-900 acres, the second most frequent lake size.[2]

As the density of shoreland development increases, the storm water running off impervious surfaces, such as roofs, decks, and driveways, can have devastating effects on receiving waters. In a study of 134 sites on 103 Wisconsin streams, researchers found that levels of urban development as low as 10 to 20 percent in a watershed were associated with severe impacts on the biotic integrity of the streams.[3] A study in Maine that paired an undeveloped, forested watershed with an adjacent watershed of similar size and physical characteristics, but with a watershed 40 percent forest and a subdivision with one-acre lots, found that the more developed watershed showed an increase of 720 percent in phosphorus export.[4] Phosphorus is the main nutrient of concern in lakes because it stimulates the growth of aquatic plants, causing nuisance algal blooms and accelerating the rate of eutrophication.

Shoreland development can also impact fish and wildlife habitat. Researchers studying 14 lakes in northern Wisconsin and Michigan's Upper Peninsula found that bluegill growth rates were significantly reduced with increasing intensity of lakeshore development. The researchers did not conclude that there is a direct cause-effect relationship between bluegill growth rates and lakeshore development, but the alteration of riparian and littoral habitat resulting from shoreland development may have reduced the capacity of lakes to maintain productive fish populations.[5]

Another study that looked at wildlife habitat in northern Wisconsin found that as shoreline housing density increases, the percentage of shoreline available as suitable green frog habitat decreases, and green frog abundance also decreases. The same study also found that that habitat alteration associated with shoreland development is likely the primary factor influencing a shift in breeding bird populations in northern Wisconsin – from edge-sensitive species, like Swainson's thrush, and black and warblers, and source/core species, like hermit thrush and brown creepers, on undeveloped lakes to "urban" species, like American robin, brown-headed cowbird, and mourning dove, on developed lakes.[6]

In a 1996 survey of Vilas County waterfront property owners, the top three reasons identified for owning waterfront property were enjoying the view, peace and tranquility; observing wildlife; and fishing.[7] In a Minnesota survey, when waterfront property owners and lake users perceived a decline

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[2] Wisconsin Department of Natural Resources. January 1996. Northern Wisconsin's Lakes and Shorelands: a report examining a resource under pressure.

[3] Wang, L; Lyons, J.; Kanehl, P. and Gatti R. June, 1997. "Influences of Watershed Land Use on Habitat Quality and Biotic Integrity in Wisconsin Streams." Fisheries. vol. 22, no. 6.

[4] Dennis, J. 1986. "Nutrient Loading Impacts: Phosphorus Export from a Low-Density Residential Watershed and an Adjacent Forested Watershed." Lake and Reserviour Management. vol. 2.

[5] Schindler, D.; Geib, S. and Williams, M. 2000. "Patterns of Fish Growth along a Residential Development Gradient in North Temperate Lakes." Ecosystems. vol. 3.

[6] Meyer, M. and Daulton, T. December 1997. Shoreland Zoning Regulations Do Not Adequately Protect Wildlife Habitat in Northern Wisconsin. Final Report – USFWS State Partnership Grant P-1-W, Segment 17.

[7] Schifferd, P. 1996. Being at the Lake: A Study of Vilas County Wisconsin Lake Property Owners. Final Report to the World Wildlife Fund.

in the scenic quality of the lake they used the most, cabin and home development was cited over 85 percent of time as the cause. Other top ranking activities that resulted in a decline in scenic quality included installation of docks and boatlifts, and the removal of trees and shrubs in the shoreland area.[8]

Revisions to ch. NR 115 are expected to address the inadequacies of the current minimum standards in achieving the statutory objectives of the program. Benefits to the environment include reduced storm water runoff and related pollutants and improved fish and wildlife habitat. The revision is also expected to address administrative problems with the current rule identified by county zoning staff and property owners.

2. Summary of rule

The Department, with assistance from the NR 115 Advisory Committee, and after eight listening sessions in 2003 and eleven public hearings in 2005, have drafted the attached revision to ch. NR 115 to meet the statutory objectives of the program, while providing certainty and flexibility to counties and property owners.

Major provisions of the proposal include changes to vegetation management in the primary shoreland buffer and changes to regulation of nonconforming structures. New requirements include minimum lot size and density requirements for multi-unit residential development, mobile home parks, and campgrounds; two formulas to calculate reduced shoreland setbacks; an impervious surface standard; and mitigation standards. A brief description of the proposal follows.

Additional highlights of substantive changes are summarized below.

Section NR 115.09 – Land division review

- The requirement for land division review is changed from the creation of "3 or more lots" to the creation of "one or more lots" to ensure that all new lots created meet minimum lot size requirements. This standard was added to protect prospective property owners and ensure that all lots have a compliant building location.
- If new lots are created that are divided by a stream or river, one side of the lot shall have a compliant building location. This provision will safeguard property owners by ensuring a building location on the lot.

Section NR 115.11 – Lot size and development density

- Minimum lot size and density standards have changed eliminating a distinction between sewered and unsewered areas. The new minimum lot size for all lots created after the effective date of the rule is 20,000 square feet and 100 feet of width at the building setback and ordinary high water mark. Counties may allow development on a substandard lot
- Counties are required to develop minimum area or lot size requirements for multi-family residential structures, mobile home parks and campgrounds.
- Counties may request the approval of standards for alternative forms of development with reduced lot sizes s for planned unit developments, cluster developments, conservation subdivisions, and other similar alternative forms of development if they include larger shoreland buffers, larger lots sizes or larger setbacks on those lots adjacent to the water.

Section NR 115.13 – Shoreland setback

- Language is added to address structures exempted by other state or federal laws from the shoreland setback standards.

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[8] Anderson, K.; Kelly, T.; Sushak, R.; Hagley, C.; Jensen, D. and Kreag, G. 1999. Summary Report on Public Perception of the Impacts, Use and Future of Minnesota Lakes: Results of the 1998 Minnesota Lake Survey. A joint publication by the University of Minnesota Sea Grant Program and Minnesota Department of Natural Resources.

- Provisions are added to allow counties to exempt structures from the shoreland setback if they meet certain requirements outlined in NR 115.13 (4).
- The construction of new dry boathouses is still exempted, however a size limit of 250 square feet has been added to the rule.
- Standards are established to qualify a lot for a reduced setback if there is not a compliant building location.

Section NR 115.15 – Height Requirements

- A new section on structure height was added to protect and preserve the natural scenic beauty of lake and riverine environments.

Section NR 115.17 – Shoreland vegetation and buffers

- Language governing management of shoreland vegetation in the primary shoreland buffer is improved, resulting in a more functional buffer protecting habitat and water quality.
- Tree and shrubbery pruning is allowed. Removal of trees and shrubs may be allowed if exotic or invasive species, diseased or damaged, or if an imminent safety hazard, but must be replaced.
- Provisions are added to allow counties to exempt 7 types of activities from the shoreland vegetation provisions.
- A formula for the width of access corridors is provided, replacing the "30 feet in any 100 feet" provision, which was confusing if a lot had less than 100 feet of frontage. A second formula for lots with greater than 200 feet of frontage was also added to address larger developments adjacent to the water.

Section NR 115.19 – Impervious surfaces

- Development is regulated through the use of percentages of total impervious surface rather than through the use of a nonconforming structure provision. The impervious surface percentages of 10% for new principal structures or 15% for existing development may be exceeded up to a maximum of 20% total impervious surface within 300 feet of the ordinary high water mark if mitigation measures are implemented and maintained.
- Provisions are also included for shared impervious surfaces, expansion, enclosing existing impervious surfaces, replacements and relocation.
- Section NR 115.21 – Mitigation provisions are now a performance measure to protect, preserve and enhance water quality and wildlife habitat while achieving natural scenic beauty.
- There is a water quality standard and a wildlife standard that the counties will have to flesh out in their individual ordinances. The water quality standard will require infiltration of runoff.
- A provision on proportionality has been added to ensure the mitigation measures required will not outweigh the impacts of the proposed project.

Section NR 115.23 – Land disturbing construction activities

- A county permit is required for land disturbing construction activities in the shoreland zone to minimize erosion and sedimentation.
- Counties shall exempt from the permit requirement activities that have already received permits from other identified permitting authorities.

3. **How does this proposal affect existing policy?**

The proposed revisions to NR 115 are consistent with past Department policy and guidance, and Wisconsin case law. In many instances, the changes codify past guidance to counties. One major shift is the proposal to regulate structures based on impervious surface area. This shift in policy eliminates the traditional nonconforming regulations and addresses past concerns raised by counties, comments received by the public at listening session and public hearings and direction received from the Natural Resources Board when ch. NR 118 was approved.

Past Department policy, based on Wisconsin common law, was that the goal of regulating nonconforming structures was to bring about ultimate compliance with the shoreland zoning ordinance. In most instances, this would require the removal of existing structures within 75 feet of the ordinary high-water mark.

This proposal recognizes that these structures usually were built in compliance with the standards in place at the time of construction, and property owners may have substantial investments in the improvements on their property. This proposal still has the goal of ultimate compliance, but recognizes that the timeline for compliance has been considerably extended in exchange for a vast majority of properties, not just one subset, limiting impervious surfaces and subsequent runoff to our lakes and rivers. Property owners are given the ability to decide whether they wish to maintain the existing structure closer to the water or build a new structure in compliance.

4. **Has the Board dealt with these issues before?**
   Yes. The Board authorized public hearings at eleven locations at its May 2005 meeting and also approved ch. NR 118, Standards for the Lower St. Croix National Scenic Riverway, on August 11, 2004. To protect the National Wild and Scenic River, Chapter NR 118 contains more protective standards than ch. NR 115.

5. **Who will be impacted by the proposed rule? How?**
   Counties will be primary parties impacted by the proposed changes in this rule, but the level of that impact will vary county by county. Many counties have already adopted improved shoreland zoning ordinances, facilitated by the Department's Lakes Planning and Protection grants. These counties may only need minimal changes to their ordinances to comply with the proposed changes in ch. NR 115. Other counties still have model ordinance language from the 1970s and 1980s in place, and will need to adopt considerable changes to their ordinances. It is likely in these situations that the counties will once more adopt the model ordinance supplied by the Department.

   Shoreland property owners, builders, landscapers and others involved in waterfront activities will be impacted once counties amend their ordinances. These parties should benefit from regulations that reduce the need for variances and that provide clear standards for activities. The public who uses and enjoys Wisconsin's navigable waters will also benefit from the improved standards designed to protect public rights in navigable waters.

6. **Information on environmental analysis, if needed.**
   An environmental analysis has been prepared for this proposal and is included with this request for permission for public hearings.

7. **Small business analysis**
   This rule requires counties to adopt shoreland zoning ordinances. County shoreland zoning ordinances must meet or exceed the minimum standards established by the rule. Any businesses in the shoreland zone have been complying with regulations since the late 1960's. This rule does not directly impact small businesses, so an analysis is not required.

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2048 (R10/2000)

Fiscal Estimate — 2007 Session

		LRB Number	Amendment Number if Applicable
☒ Original	☐ Updated		
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number NR 115

Subject
Wisconsin's Shoreland Protection Program

Fiscal Effect
State: ☒ No State Fiscal Effect
☐ Indeterminate

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

☐ Increase Existing Appropriation ☐ Increase Existing Revenues
☐ Decrease Existing Appropriation ☐ Decrease Existing Revenues
☐ Create New Appropriation

☐ Increase Costs — May be possible to absorb within agency's budget.
☐ Yes ☐ No

☐ Decrease Costs

Local: ☐ No Local Government Costs
☒ Indeterminate

1. ☐ Increase Costs
☐ Permissive ☐ Mandatory
2. ☐ Decrease Costs
☐ Permissive ☐ Mandatory
3. ☐ Increase Revenues
☐ Permissive ☐ Mandatory
4. ☐ Decrease Revenues
☐ Permissive ☐ Mandatory
5. Types of Local Governmental Units Affected:
☒ Towns ☒ Villages ☒ Cities
☒ Counties ☐ Others
☐ School Districts ☐ WTCS Districts

Fund Sources Affected
☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG-S

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This rule package proposes to make several changes and additions to Wisconsin's Shoreland Protection Program.

State Fiscal Impact
The department has an existing oversight capacity in the implementation, administration and enforcement of the current NR 115 program. In some cases, enforcement costs for the Department may actually decrease due to the decline in variance requests that will be realized with the increased level of flexibility offered to property owners and counties in the new rule. In other cases, the Department may incur additional costs related to the policy legal review and approval of new shoreland zoning ordinances required to implement the revised statewide minimum standards.

The Department expects that the net result will be that state costs will not substantially change as a result of the proposed NR 115 rule revisions.

Local Fiscal Impact
Counties and cities or villages that have annexed land since 1982 or incorporated since 1994 currently administer and enforce local shoreland zoning ordinances which meet or exceed the statewide minimum standards found in NR 115. Towns may also adopt a shoreland zoning ordinance, but it must be at least as restrictive as the applicable county's.

Counties and annexed or incorporated areas will incur one-time expenditures to revise shoreland zoning ordinances to reflect the new statewide minimum standards. However, after this initial increased workload and expense, the Department expects that the administrative burden of the zoning provisions will be less time-consuming than the current standards. Some counties have indicated that the new impervious surface standards are going to require additional staff. The Department contends that the same staff that worked on the issue of nonconformity can deal with impervious surfaces since nonconforming provisions are no longer part of the statewide standards. In addition, counties have 2 years before they have to have a shoreland ordinance in place. This delayed effective date was to allow the county to develop an ordinance which meets the new statewide minimum standards.

Long-Range Fiscal Implications

The revised rule will provide increased predictability for investment decisions for local government, businesses, residents and new property owners, thereby decreasing operational costs, increasing property tax revenues, and generating economic growth from a more predictable zoning environment.

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	04-20-07

Fiscal Estimate — 2007 Session

LRB Number	Amendment Number if Applicable
Bill Number	Administrative Rule Number NR 115

Page 2 Assumptions Narrative Continued

Assumptions Used in Arriving at Fiscal Estimate – Continued

The exact annualized local costs including, increased and decreased costs, increased revenues (based on local permitting fees including new permitting systems and subsequent fees that may be developed) and decreased revenues (based on a reduction in the number of variances requested) are extremely difficult to estimate and will vary considerably on a county by county basis. Consequently, the Department has characterized the overall impact on local government costs as "indeterminate".

Wisconsin Department of Administration
Division of Executive Budget and Finance
DOA-2047 (R10/2000)

Fiscal Estimate Worksheet — 2007 Session

Detailed Estimate of Annual Fiscal Effect

		LRB Number	Amendment Number if Applicable
☒ Original	☐ Updated		
☐ Corrected	☐ Supplemental	Bill Number	Administrative Rule Number NR 115

Subject

Wisconsin's Shoreland Protection Program

One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

Extremely difficult to predict. Local government costs could be limited to the costs of notice and public hearing requirements for amending the county shoreland zoning ordinance or impacts may include costs of retaining either legal counsel and/or a planning consultant to draft an amended ordinance.

Annualized Costs:	Annualized Fiscal Impact on State Funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations — Salaries and Fringes	$ 0	$ - 0
(FTE Position Changes)	(0.00 FTE)	(- 0.00 FTE)
State Operations — Other Costs	0	- 0
Local Assistance	0	- 0
Aids to Individuals or Organizations	0	- 0
Total State Costs by Category	$ 0	$ - 0
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	$ 0	$ - 0
FED	0	- 0
PRO/PRS	0	- 0
SEG/SEG-S	0	- 0
State Revenues — Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)	Increased Revenue	Decreased Revenue
GPR Taxes	$	$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
Total State Revenues	$	$ -

Net Annualized Fiscal Impact

	State	Local
Net Change in Costs	$ 0	$ Variable
Net Change in Revenues	$ 0	$ Variable

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
Joe Polasek	266-2794	04-20-07

I. Environmental Assessment for Department Administrative Rules Related to the Revision of the Shoreland Management Program

DECISION ON THE NEED FOR AN
ENVIRONMENTAL IMPACT STATEMENT

(This decision is not final until certified by the Director of the Office of Energy and Environmental Analysis.)

In accordance with s. 1.11, Wis. Stats., and Chapter NR 150, Wis. Admin. Code, the Department is empowered to determine whether it has complied with s. 1.11, Wis. Stats.

Authority
The proposed amendments to ch. NR 115 are intended to allow a county more flexibility in how they regulate land use in shorelands, and to give shoreland property owners more land use options, while still protecting the public interest in navigable waters and adjacent shorelands.

Section 281.31(6), Stats., provides that "the department shall prepare and provide to municipality's general recommended standards and criteria for . . . navigable water protection regulations and their administration." Section 59.692 (6), Stats., provides that "if the department, after notice and hearing, determines that a county has enacted an ordinance that fails to meet the shoreland zoning standards, the department shall adopt such an ordinance for the county." Section 59.692 (1) (c), Stats., defines "shoreland zoning standard" to mean "a standard for ordinances enacted under this section that is promulgated as a rule by the department."

Purpose and Need
In 1997, a study by the Department found that the current minimum standards in ch. NR 115 are only providing minimal protection of water quality and wildlife habitat. The study concluded that to meet the statutory objectives of the program, improved minimum standards are needed for shoreland zoning ordinances.[1]

In addition, counties across the state have expressed frustration with the current minimum standards found in ch. NR 115. The concerns of counties with existing standards include:

- Standards are too vague or undefined, preventing consistent application across the state.
- Standards do not provide enough direction to allow counties to amend their ordinances, requiring considerable interpretation from Department staff.
- Standards are inflexible, discouraging counties to adopt innovative regulatory programs.

Property owners have also expressed frustration with the current minimum standards, including:

- The "50% rule" for nonconforming structures is not equitable.
- In certain situations, reduced setbacks or improvements to nonconforming structures should not require a variance.

In response to inadequacies identified in the current minimum standards in ch. NR 115, Wis. Admin. Code, and the concerns raised by county staff and property owners, a 28-member advisory committee was formed by the Department in November of 2002 to help guide proposed changes in the rule. Please refer to Attachment 1 for a summary of the rule revision activities and Attachment 2 for advisory committee membership information.

[1] Bernthal, T. October 1997. Effectiveness of Shoreland Zoning Standards to Meet Statutory Objectives: A Literature Review with Policy Implications. Wisconsin Department of Natural Resources.

Affected Environment

A. Physical and biological environments affected by this proposal

This proposal will affect most of Wisconsin's water resources, which include more than 50,000 miles of rivers and streams, more than 15,000 inland lakes, and more 1,017 miles of Great Lakes shoreline. The shoreland zone which falls under the jurisdiction of ch. NR 115, Wis. Admin. Code, is defined in s. 59.692 (1)(b), Wis. Stats., as:

- the area within 1,000 feet of the ordinary high water mark of navigable lakes, ponds, and flowages; and
- the area within 300 feet of the ordinary high water mark of navigable rivers and streams, or to the landward side of the floodplain, whichever distance is greater.

Section 59. 692, Wis. Stats., requires the zoning of shorelands on navigable waters by counties in unincorporated areas and by cities and villages in areas annexed after May 7, 1982 and areas incorporated after April 30, 1994.

B. Units of government, industries, organizations and other parties affected by this proposal

Counties will be the primary party affected by the proposed changes in this rule, but the level of that impact would vary county by county. Many counties have already adopted improved shoreland zoning ordinances, facilitated by the Department's Lakes Planning and Management grants. These counties may only need minimal changes to their ordinances to comply with the proposed changes in ch. NR 115. Other counties still have model ordinance language from the 1970s and 1980s in place, and will need to adopt considerable changes to their ordinances. It is likely in these situations that the counties will once more adopt the model ordinance supplied by the Department.

Shoreland property owners, builders, landscapers and others involved in waterfront activities will be affected once counties amend their ordinances. The public that uses and enjoys Wisconsin's navigable waters will also benefit from the proposal.

Environmental effects and their significance

It is the responsibility of the Department, in the discharge of its mandate under ss. 59.692 and 281.31, Wis. Stats., to require county shoreland zoning ordinances to adhere to specific standards and criteria for navigable water protection. Section 281.31, Wis. Stats., provides that:

> "Such standards and criteria shall give particular attending to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations."

A. Water Quality

There is no such thing as chemically pure water in nature. In nature, water quality can vary with climate, watershed mineralogy, and materials carried in with precipitation and runoff. As landscapes shift from a "natural" state to a "developed" state, the rain and runoff can carry oils, bacteria, litter, sediment, fertilizers, and foreign chemicals from streets, parking lots, lawns, dumpster pads, and metal roofs. Some 70% of the water pollution in the United States comes from these "nonpoint" sources: the sediment, oils and chemicals that runoff carries from eroding soil, parking lots, and intensely maintained lawns.[2] Table 1 summarizes common materials in natural and developed watershed and their roles.

[2] Ferguson, B. K. 1998. Introduction to Stormwater: Concept, Purpose, Design. New York: John Wiley & Sons, Inc.

Table 1. Some of the Constituents of Surface Waters.[3]

Constituent	Source in Nature	Role in Natural Ecosystem	Source of Developed Area Excess	Role of Excess
Sediment	Banks of meandering channels and shorelines	Maintain stream profile and energy gradient; store nutrients	Construction sites; eroding banks	Abrade fish gills; carry excess nutrients and chemical in absorption; block sunlight; cover gravel bottom habitats
Organic Compounds	Decomposing organic matter	Store nutrients	Car oil; herbicides; pesticides; fertilizers	Deprive water of oxygen by decomposition
Nutrients	Decomposing organic matter	Support ecosystems	Organic compounds; organic litter; fertilizers; food waste; sewage	Unbalance ecosystems; produce algae blooms; deprive water of oxygen by decomposition
Trace Metals	Mineral weathering	Support ecosystems	Cars; construction materials; all kinds of foreign chemicals	Reduce resistance to disease; reduce reproductive capacity; alter behavior
Chloride	Mineral weathering	Support ecosystems	Pavement deicing salts	Sterilize soil and reduce biotic growth
Bacteria	Native animals	Participate in ecosystems	Pet animals; dumpsters; trash handling areas	Cause risk of disease
Oil	Decomposing organic matter	Store nutrients	Cars	Deoxygenate water

Polluted runoff results when storm water or snow melt washes across the land and carries contaminants, such as suspended solids, nutrients, heavy metals, pathogens, and other toxic pollutants to surface waters or ground waters. This polluted runoff can destroy fish habitat, cause direct mortality of fish and other wildlife, reduce drinking water quality, clog harbors and streams with sediment and reduce recreational use of lakes and streams. Nutrients, such as phosphorus and nitrogen, while essential for plant and animal growth, can have harmful effects on waterbodies when they are present in excess, resulting in heavy plant and algae growth, including blue-green algae that may pose serious health threats to animals and humans, lead to fish kills, and impair opportunities for boating, fishing and swimming. When the plants and algae die, decomposition of this excess organic matter significantly depletes the oxygen in the water, which degrades the habitat and limits the fish and invertebrate species that can survive. Sediment covers spawning grounds and negatively affects water clarity and the opportunity for fish to find food.

The short-term environmental effects on water quality are expected to be positive. Effects will be seen in localized or site-specific benefits to water quality. The standards are designed to preserve shoreland buffers, set back structures from the water's edge, and reduce runoff from impervious surfaces, resulting in:

- displacement of sediment-producing activities away from surface waters,
- reduction in the velocity of sediment-bearing runoff, allowing sediments to settle out of the runoff and be deposited in the buffer,

- stabilization of banks, preventing shoreline erosion, and
- moderation of water flow, reducing bed scour.

The long term environmental effects on water quality are also expected to be positive. With restoration of shoreland buffers and implementation of best management practices to control stormwater runoff, there will be a reduction in the pollution loading to waters of the state from shoreland development.

B. Wildlife Habitat

Shorelands provide wildlife habitat by offering foraging and nesting habitat as well as cover for a mix of upland, aquatic and wetland species. Shorelands can also serve as travel corridors for migratory and nomadic, as well as resident, species. Shoreland vegetation protects surface waters and wetlands from temperature fluctuations, which can affect a river's capacity to hold oxygen. The leaf litter and woody debris from trees and shrubs along smaller streams supply most of the energy utilized by creatures within the stream. Woody debris also traps leaf litter, making it available to organisms over a long period of time. Shoreland vegetation also helps stabilize banks, and naturally undercut areas beneath tree roots offer cover for fish, turtles, and other creatures.

Many factors influence the capacity of a buffer to provide wildlife habitat. Several major factors include:

- Landscape position – Buffers can function as both resident ("in-place") habitat and as travel routes for wildlife. As resident habitat, a buffer's value is supplemented by other habitats to which is it connected. This is important because larger habitat blocks are known to support greater diversity than smaller ones.
- Integrity of the buffer – When buffers become fragmented, the effects can include direct mortality (roadkill), modification of animal behavior, alteration of physical or chemical environments, and introduction of exotic species. The effects of buffer fragmentation can extend into aquatic and wetland habitats by altering hydrology, increasing sedimentation, and introducing pollutants.
- Edge effects – When buffers become fragmented strips between land and water, they may be subject to negative edge effects of predation and parasitism, as well as physical effects such as wind, drying, temperature increase, and blow down of trees. Edge habitats tend to harbor disproportionate populations of predators such as blue jays, crows, raccoons, skunks, red foxes, and dogs and cats. A "soft" edge that has a gradual transition into upland areas may reduce the negative edge effects. Essentially this means providing a transitional upland buffer to support the shoreland buffer habitat functions more fully.
- Vegetation type – The species of plants in an area generally determine the animals that will occupy an area. Dense stands of evergreen trees, for example, are known for their value as deer wintering areas, and nut-producing trees, such as oak and hickory, provide food for a number of species, including bear, deer, turkey, and squirrels.
- Habitat structure – The structure provided by a shoreland determines which species can use the habitat. Habitat structure includes:
  - Horizontal diversity
  - Vertical diversity
  - Soil qualities
  - Dead standing trees
  - Downed logs
  - Rocks, boulders, cliffs[3]

The short-term environmental effects on wildlife habitat are expected to be positive. Preserving shoreland vegetation, limiting land disturbing activities, setting structures away from the water's edge, controlling the density of shoreland development and decreasing runoff from impervious surfaces will all help limit impacts of shoreland development.

The long-term environmental effects on wildlife habitat are also expected to be positive; although the improvement in long-term improvement in wildlife will vary with site specific considerations. In areas that are already heavily developed, wildlife habitat is expected to improve as shoreland buffers are restored and shoreland vegetation recovers. In areas that have not yet been developed however, there will be some initial

[3] France, R. L., ed. 2002. Handbook of Water Sensitive Planning and Design. New York: Lewis Publishers.

decline in wildlife habitat as areas become developed, but the decline is less than would be expected without any design standards in place to protect critical shoreland wildlife habitat.

C. Natural Scenic Beauty

The aesthetics of a shoreline may be an intangible concept, but many people often recognize when it has been converted from a natural state to a more suburban landscape. In a Minnesota survey, waterfront property owners and lake users cited cabin and home development over 85% of the time as the cause when they perceived a decline in the scenic quality on the lake they used the most. Other activities at the top list that resulted in a decline in scenic quality included installation of docks and boat lifts, and removal of trees and shrubs in the shoreland area.[4]

These man-made elements are often seen as visual intrusions in a natural setting – they "grab" our attention and interrupt or upset the natural character of a setting. In general, landscape aesthetic assessment literature has found that more natural scenes, those in which human presence or activities are relatively less visually apparent, are consistently preferred over scenes where human development is more obvious.

It is possible however to reduce the obvious nature of man-made elements, especially those which may be prominently located. The contrast between natural and man-made elements can be reduced in a variety of ways, including:

- changing the color to camouflage the structure,
- reducing gloss or reflectivity,
- planting trees and shrubs to screen and shade the structure,
- softening highly visible angularities or structural complexity,
- removing structural elements from ridge lines to reduce the contrast of silhouettes,
- adapting structural forms which reflect the local terrain,
- reducing artificial lighting, and
- keeping clearings and land disturbances to a minimum.[5]

The short-term and long-term environmental effects on natural scenic beauty are expected to be positive. Maintaining or restoring a shoreland buffer, setting structures back from the water's edge, and limiting shoreland land disturbing activities will help preserve the natural beauty of shorelands by preserving shoreland vegetation, and screening structures from the view of people on or across the water.

Significance of cumulative effects

When a landowner develops a waterfront lot, many changes may take place including the addition of driveways, houses, decks, garages, sheds, piers, rafts and other structures, wells, septic systems, lawns, sandy beaches and more. Each of these alterations decreases the ability of the shoreland area to serve its natural functions.

A. Water quality

Compaction of soil, removal of trees and native plants and the addition of impervious surfaces prevent water from soaking into the ground thereby increasing stormwater runoff that carries fertilizers, pesticides and other pollutants to the lakes and streams. A corridor of natural shoreland vegetation traps and filters sediment and debris from runoff. Depending on the size (length and depth) and complexity of the shoreland, 50 to 100% of the solid particles can settle out as plants slow sediment-laden runoff.[6]

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[4] Anderson, K. A., T.L Kelly, R. M. Sushak, C.A. Hagley, D.A. Jensen, G. M. Kreag. 1999. Summary Report on Public Perception of the Impacts, Use, and Future of Minnesota Lakes: Results of the 1998 Minnesota Lakes Survey. A joint publication by the University of Minnesota Sea Grant Program (SH 1) and Minnesota Department of Natural Resources, Office of Management and Budget Services.

[5] Litton, R., R. Tetlow, J. Sorenson and R. Beatty. 1974. Water and landscape: an aesthetic overview of the role of water in the landscape. Port Washington, NY: Water Information Center, Inc.

[6] Wegner, S. 1999. *A Review of the Scientific Literature on Riparian Buffer Width, Extent and Vegetation*. Office of Public Service and Outreach, Institute of Ecology, University of Georgia. Athens, GA. http://greer.ecology.uga.edu/buffer_litreview.pdf

B. Fish and wildlife habitat

Wildlife are attracted to lakes and streams because the essentials of life for many species occur there, including food, water, shelter, and a place to raise their young. The aquatic insect community is an important component of the food chain in streams.[7] Over 20 years ago researchers found that aquatic insect diversity drops sharply in streams where watershed impervious surface exceeded 10 to 15%.[8]

Fine sediments also affect fish spawning, egg incubation and fry rearing. A study of 47 warm water streams in southeast Wisconsin that found that fish and insect populations decline dramatically when impervious surfaces exceed about 8-10% of the watershed. Streams with more than 12% imperviousness have consistently poor fish communities.[9]

A northern Wisconsin study found significant declines on developed shorelines in insect-eating and ground-nesting birds such as loons and warblers, contrasting with increases of seed-eating birds and deciduous-tree nesting birds such as crows and goldfinches.[10] In short, "city birds" are favored on developed shorelines over other species. Fewer green frogs were found on lakes in northern Wisconsin when the shorelines were developed. Frogs were eliminated from shorelines with 100-foot lots (52 homes per mile).[11]

C. Economics

When purchasing waterfront property, people inherently value clean water, plentiful wildlife and scenic vistas. A study in Maine found that property values would decline approximately $10.5 million with a three-foot decline in water clarity, roughly 5% of the total property value.[12] Each year more than 1.5 million anglers spend 17 million days fishing in Wisconsin. They spend $1.1 billion directly on fishing related expenses, which generates more than $2.1 billion in economic activity.[13]

Changing one waterfront lot may not result in a measurable change in the quality of the lake or stream. The cumulative effects to water quality, wildlife habitat, and property values, however, can be enormous and long lasting. This is a policy decision that may require continuing education to the regulated community, but certainly one that needs to be weighed heavily when considering the overall health of Wisconsin's lakes and rivers.

Risk or Uncertainty

While the regulations in ch. NR 115 continue to provide statewide minimum standards, it is unclear whether they will be adequate for all water resources to achieve the statutorily mandated water quality, habitat and aesthetic goals of the program. Counties will continue to be able to identify areas where the minimum standards may be inadequate and to develop regulations that work more effectively to protect the water resources in a particular geographic area. Therefore, on a county by county basis, local units of government will be able to act proactively to develop more specific standards for the protection of water quality, wildlife habitat and natural scenic beauty.

Even though counties will continue to be able to develop ordinances that meet their individual local needs, the goal of creating a code of minimum standards for the entire state was difficult. When reviewing and

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[7] Center for Watershed Protection. Impacts of Impervious Cover on Aquatic Systems. Watershed Protection Research Monograph No. 1, March 2003, p.93.

[8] Klein, R. 1979. Urbanization and Stream Quality Impairment. *Water Resources Bulletin*. 15(4):948-963.

[9] Wang, L., J. Lyons, P. Kanehl, R. Bannerman, and E. Emmons 2000. Watershed Urbanization and Changes in Fish Communities in Southeastern Wisconsin Streams. *Journal of the American Water Resources Association*. 36:5(1173-1187); Wang, L., J. Lyons, and P. Kanehl 2001. Impacts of Urbanization on Stream Habitat and Fish Across Multiple Spatial Scales. *Environmental Management*. 28(2):255-266.

[10] Lindsay, Alec R., Gillum, Sandra S., Meyer, Michael W. Influence of lakeshore development on breeding bird communities in a mixed northern forest. *Biological Conservation* 107(2002) 1-11.

[11] Woodford, JE and M. W. Meyer. 2002. Impact of lakeshore development on green frog (Rana clamitans) abundance. *Biological Conservation*. 110(2): 277-284; Meyer, Michael, James Woodford, Sandra Gillum, Terry Daulton. 1997.

[12] Maine Department of Environmental Protection Lake Assessment Program . 2000. More on Dollars and Sense: The Economic Impact of Lake Use and Water Quality.

[13] U.S. Fish & Wildlife Service.1998. *1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, State Overview.*

updating an administrative rule that is nearly 40 years old, there are always concerns that the new provisions and regulations may not function as well on the ground as they seem to on paper. The Department in conjunction with a very diverse advisory committee of experts attempted to utilize "real world" models that are currently working in county ordinances. The Advisory Committee includes an automatic check for administration issues with three county code administrators participating who will be charged with the implementation of the revised ch. NR 115 standards. In addition, before requesting a second round of public hearings, the department specifically met with a focus group of county zoning administrators to address administrative and implementation issues. Zoning administrators were asked to bring real permitting examples so we could apply the draft code to real applications and make modification where necessary. These members, in consultation with the Wisconsin County Code Administrators Association and the Wisconsin Counties Association, provided comments on areas of the rule thought to be unenforceable, confusing or misleading. Those areas have been addressed in this package.

Significance of precedent

Promulgation of this rule is in accordance with Sec. 281.31 Wis. Stats., and will satisfy the Department's statutory responsibility to provide statewide minimum standards for county shoreland zoning ordinances for navigable water protection. Specifically, section 281.31, provides that:

> "Such standards and criteria shall give particular attending to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations."

In addition, the revisions to ch. NR 115 will not prevent a local unit of government from implementing more resource protective measures to guide shoreland development. Several counties have moved forward and classified the water resources in the county and developed resulting shoreland zoning ordinances based on this classification system. It is our intention that these types of initiatives will be able to continue with minimal modifications to reflect modifications to the statewide minimum standards.

The revised ch. NR 115 also contains several areas where the county can choose to utilize a different mechanism for regulation than proposed in the rule. For this new provision, the Department would need to review and approve county developed initiatives to guarantee that they will be at least as protective as the method proposed in ch. NR 115.

Significance of controversy over environmental effects

There continues to be controversy over the proposed rule. Due to the distinct nature of the public trust versus private property rights, there will probably always be a debate over zoning rules and regulations to protect water quality, wildlife habitat and natural scenic beauty. Just as in general zoning there are debates of a similar nature related to subdivision regulations, noise, odor, and other issues.

The rule revision process has taken almost five years, involved a highly diverse and well represented advisory committee, gathered additional detail through five issue specific workgroups with additional affected parties at the table, added a public participation step with eight listening sessions around the state and then accepted comment on five individual drafts of the rule before requesting permission for the first round of formal public hearings.

Public hearings were an opportunity for the public to review and comment on the draft proposal to update Wisconsin's nearly 40 year old Shoreland Management Program. Eight listening sessions, eleven public hearings in 2005 and a request for another round of hearings in summer 2007 clearly indicates that the Department understands the complexity of this issue. Dedication to a complete and thorough public participation process is critical to the success of a revised program. Public hearings provide a means for incorporating the public's values into decisions that affect their lives and also allow the public the opportunity to offer meaningful input into the decision making process. They are intended to produce a code that not only protects the water resources that make Wisconsin so desirable, but also to balance that

protection with an understanding of property ownership and introduce a level of flexibility that makes protection of our resources socially and economically feasible.

In 2005, the Department held the first round of public hearings, eleven total around Wisconsin. Comments were accepted until August 26, 2005. Over 1400 people attended the public hearings and over 50,000 comments from nearly 12, 000 individuals were received throughout the public comment period.

Four types of comments were received as a result of the public comment period. All carried the same weight. To be considered as a comment, the respondent was only required to provide their name. All written comments were accepted through regular mail or electronic submittal. Comment types are as follows:

- Written comments received on prepared forms available at the public hearings or the revision update webpage
- Individual letters
- Form letters
- Oral comments received during the public hearings

The department has prepared an excel database which summarizes all the comments received throughout the public comment period. The database is broken into segments of the code and lists all comments related to individual sections. There are also individual pages devoted to miscellaneous comments and comments outside the scope of the NR 115 revision process. Comments have been classified in five different categories including:

- Suggested language modifications
- Neutral (oral comments state "as interest may appear")
- In favor
- In favor, but too permissive
- Opposed, too restrictive

General categories of comments and number of respondents are listed in the chart below. For a more detailed summary of the public hearing comments see attachment 5 at the end of this document or for a complete copy of the public hearing comment database, please contact Toni Herkert at toni.herkert@wisconsin.gov or at (608)266-0161.

NR 115 Issue	**Neutral**	**In Favor**	**Too Permissive**	**Opposed**
General	133	134	N/A	116
Definitions	24	5	9	319
Land Division	10	4	5	323
Lot Sizes	17	5	9152	1020
Setbacks	18	19	110	2927
Buffers	33	27	18,130	1017
Impervious Surfaces	6	2	9092	684
Land Disturbance	8	0	30	166
Nonconformity	24	909	72	3296
Mitigation	8	180	21	485
Misc. Comments	809	118	144	1014
Outside the scope of NR 115	14	2	15	2
Comments totals by Category	**1104**	**1405**	**36,780**	**11,369**
		TOTAL COMMENTS	**50,658**	

Each NR 115 issue outlined above contains several components, for example the comments on setbacks deal not only with the minimum 75 foot setback, but also relate to setback averaging, measuring the setback, requiring permits for various activities within the setback, certain exemptions from the setback, the issue of boathouses, wetland setbacks, the definition of structures and others. Therefore, the categories contain several elements that fall within the specific section of the code. For more detail, please see attachment 5 at the end of the document.

Each of the issue have been addressed in the 2007 revision to NR 115 in which we are requesting authorization to hold another round of public hearings around the state in July and August 2007. Once the second round of public hearings are completed a more detailed analysis of comments and department responses will be developed.

There will always be some controversy associated with shoreland zoning. The controversy seems to stem from the property rights movement and the overall general dissatisfaction with zoning as a regulatory tool. The rule will probably never be able to satisfy everyone. However, the revision is a major step in the right direction, clarifying several gray areas, using common sense and concepts that will work in the "real world," allowing local innovation to continue and balancing the protection of water quality, wildlife habitat and natural scenic beauty with the needs and wants of today's riparian owners.

Specific to ch. NR 115 and the rule revision process, there will continue to be some controversy surrounding components of the rule such as shoreland vegetation and the new requirements for impervious surface standards and mitigation. Most of the uneasiness is derived from the fact that the concepts are new to shoreland zoning. The can work and have worked in counties around the state, however, here they are required as minimum standards for all counties. Throughout the public hearing process, the Department will continue to listen and make strides to produce the best rule possible to balance the statutory goals of the program with the understanding that private citizens need to have a certain degree of latitude when developing waterfront properties. Shoreland management is a balancing act, attempting to protect our navigable water resources while respecting the rights of individual landowners. Given the opportunity, the Department can attain this goal.

Recommendation

The attached analysis of Proposed Revisions of chapter NR 115, Wis. Admin. Code, pertaining to the revision of the shoreland management program is of sufficient scope and detail to conclude that this is not a major state action which would significantly affect the quality of the human environment. An environmental impact statement is not required prior to final action by the Department to adopt this rule. This determination was made considering the attached analysis and the following factors:

Mary Ellen Vollbrecht, Section Chief Waterways Protection	Date
Toni Herkert, Evaluator	Date
Russell A. Rasmussen, Director Bureau of Watershed Management	5/1/2007 Date

Certified to be in compliance with WEPA

Director, OEEA (or designee)	Date

II. Issue Identification Activities and Agency Contacts

A. Rule Revision Public Participation Process

The NR 115 Advisory Committee was developed to aide the department with a comprehensive revision to the State's Shoreland Management Program. The group met eight times between November 2002 and November 2003 to discuss issues surrounding shoreland development and to identify areas of concern. Initial meetings of the advisory committee reviewed scientific research and legal perspectives on shoreland development. The remainder of the meetings focused on specific issues related to shoreland management – setbacks and buffers, nonconforming structures, and development density. The committee worked with the Department to develop an initial set of concepts for proposed changes to ch. NR 115, Wis. Admin. Code.

In the summer of 2003, the Department, with support and participation by the Advisory Committee members, decided to convene five work-groups to flesh out remaining issues in the revision. The five work-groups, agriculture, alternative development, forestry, recreational areas and urbanized waters, each met a number of times in person or via phone conference and/or e-mail to discuss pertinent issues. Each work-group was led by a Department staff member involved in the revision process and the membership included Advisory Committee representatives and other affected or interested parties in specialized fields related to the subject matter. (Please refer to attachment 3 for work-group membership information.)

In November and December of 2003, the initial set of recommendations was taken to eight listening sessions around the state to gather public comments. This was an extra step the Department chose to take to ensure public participation throughout the revision process. Over 1300 comments were received during the listening session comment period.

Based on the statutory objectives of the program, initial recommendations from the advisory committee, and public comments, the Department drafted a first copy of proposed changes to ch. NR 115, Wis. Admin. Code. Up until this point, the advisory committee and the public were responding to concepts. Beginning in May 2004, the NR 115Advisory Committee met five times and reviewed five drafts of proposed changes to ch. NR 115, Wis. Admin. Code.

In July and August of 2005, the department held eleven public hearings around the state and collected over 12,000 comments during the public comment period (comments are available upon request). After the hearings, three focus groups were formed to flesh out specific issues identified during the hearing process. These focus groups worked on the issues of impervious surfaces, mitigation and implementation and met in the fall and winter of 2006. (Please refer to attachment 4 for focus group membership information.)

Due to the amount of change that has occurred in the proposal based on hearing comments and the results of the focus group work, the department is now seeking permission to take a revised proposal back out to the public for a second round of public hearings in the summer of 2007.

Intra-Agency Cooperation

The Shoreland Program within the Waterway Protection Section of the Bureau of Watershed Management was the Department's primary participant in the rule-development process. The Runoff Management Section of the Bureau of Watershed Management, the Bureau of Fisheries Management and Habitat Protection, the Division of Forestry, the Office of the Great Lakes, the Bureau of Legal Services and the Bureau of Integrated Science Services were consulted on and support the provisions on shoreland buffers, water quality improvement structures, wildlife and fisheries habitat improvement structures, and impervious surfaces.

Inter-Agency Cooperation

The Department of Commerce was contacted and consulted on private on-site sewage disposal and sanitary sewer systems as well as infiltration standards contained in the mitigation section of the rule. The Department of Administration was consulted on the plat review provisions in the land division section of the revision and the Wisconsin Department of Transportation was consulted on the distinction of public and private roads for common ownership properties like condominium developments. In addition, County Zoning Departments across the state were involved in varying degrees of review throughout the revision process. Some were members on the full advisory committee, some participated in work groups or focus groups, most provided comments during public comment periods and several were briefed individually

numerous times during the 5 year process to ensure continued dialogue. We also worked with Regional planning agencies to secure innovative land use and zoning methods for discussion and potential inclusion in the revision.

Agency Contacts
Todd Ambs – Water Division Administrator
Russ Rasmussen – Director, Bureau of Watershed Management
Toni Herkert – Policy Coordinator, Bureau of Watershed Management

Additional Information
Attached to this document is the Summary of Rule Revision Activities (Attachment 1), NR 115 Advisory Committee Membership (Attachment 2), NR 115 Work Group Membership (Attachment 3), NR 115 Focus Group Membership (Attachment 4) and the NR 115 2005 Public Hearing Summary (Attachment 5).

III. NR 115 Revision Description

A. Proposal objectives

The revision of ch. NR 115, Wis. Admin. Code, was initiated because the Department had concluded that the current minimum standards were not achieving the statutory objectives of the program. Section 281.31 (1), Wis. Stats., provides that shoreland subdivision and zoning regulations shall "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty."

It is the responsibility of the Department, in the discharge of its mandate under ss. 59.692 and 281.31, Wis. Stats., to require county shoreland zoning ordinances to adhere to specific standards and criteria for navigable water protection. Section 281.31, Wis. Stats., provides that:

> "Such standards and criteria shall give particular attending to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations."

The Shoreland Management Program is also a key component in the fulfillment of the Department's responsibility to uphold Wisconsin's Public Trust Doctrine. Under the Public Trust Doctrine, Wisconsin's lakes and rivers are public resources, owned in common by all Wisconsin citizens. While it was once primarily interpreted to protect public rights to transportation on navigable waters, the Public Trust Doctrine has been broadened to protect public rights to water quality and quantity, recreational activities, and scenic beauty.[14]

Wisconsin law recognizes that owners of lands bordering lakes and rivers - "riparian" owners - hold rights in the water next to their property. These riparian rights include the use of the shoreline, reasonable use of the water, and a right to access the water. However, the Wisconsin State Supreme Court has ruled that when conflicts occur between the rights of riparian owners and public rights, the public's rights are primary and the riparian owner's secondary.[7]

The primary objective of this rule revision was to develop standards that satisfy both the statutory objectives of Shoreland Management Program, as well as the Department's responsibility to all citizens under the Public Trust Doctrine. However, as mentioned in the History and Background section, other equally important goals of the revision effort were to address concerns raised by counties regarding amending and administering shoreland zoning ordinances, and to address concerns raised by property owners regarding the regulations of nonconforming structures.

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[14] Quick, John. 1994. "The Public Trust Doctrine in Wisconsin." Wisconsin Environmental Law Journal, Vol. 1, No. 1.

B. Key Studies, assumptions or policies

The concept of revising the Shoreland Management Program stemmed from several objectives noted above. A key assumption that initiated the revision process was that existing standards were not adequately achieving the statutory objectives of the program. Key studies that helped shape the proposal are listed below. This is not exhaustive list of studies referenced, but a compilation of some of the key references used.

Bernthal, T. 1997. Effectiveness of Shoreland Zoning Standards to Meet Statutory Objectives: A Literature Review with Policy Implications. Madison, WI: Wisconsin Department of Natural Resources.

Christensen, D., B. Herwig, D. Schindler, and S. Carpenter. 1996. "Implications of Lakeshore Residential Development on Coarse Woody Debris in North Temperate Lakes." Ecological Applications. Vol. 6, No. 4.

Engel, S. and J. Pederson, Jr. 1998. The Construction, Aesthetics, and Effects of Lakeshore Development: A Literature Review. Wisconsin Department of Natural Resources, Research Report 177.

Ferguson, B. K. 1998. Introduction to Stormwater: Concept, Purpose, Design, New York: John Wiley & Sons, Inc.

Fischer, R. and J. Fischenich. 2000. Design Recommendations for Riparian Corridors and Vegetated Buffer Strips. US Army Engineer Research and Development Cetner, ERDC TN-EMRRP-SR-24. http://www.wes.army.mil/el/emrrp/pdf/sr24.pdf

France, R. L., ed. 2002. Handbook of Water Sensitive Planning and Design. New York: Lewis Publishers.

Graczyk, D., Hunt, R., S. Greb, S. Buchwald, and J. Krohelski. 2003. Hydrology, Nutrient Concentrations, and Nutrient Yields in Nearshore Areas of Four Lakes in Northern Wisconsin, 1999 – 2001. U.S. Geological Survey.

Haycock, N., T. Burt, K. Goulding, and G.Pinay. 1997. Buffer Zones: Their Processes and Potential in Water Protection.

Jennings, M., M. Bozek, G. Hatzenbeler, D. Fago, K. Schmude, K. Otis, R. Piette, R. Kahl, R. Hay, R. Sonntag, J. Coke, R. Chenowith, and T. Kapper. 1996. Shoreline Protection Study: A Report to the Wisconsin State Legislature. Wisconsin Department of Natural Resources, PUBL-RS-921-96.

Johnson, A.W. and D. M. Ryba. 1992. A Literature Review of Recommended Buffer Widths to Maintain Various Functions of Stream Riparian Areas. King County Surface Water Division.

Konkel, D., S. Borman, and K. Voss. 1997. The Effect of Shoreline Use on the Aquatic Plant Communities of West Central Wisconsin Lakes. Wisconsin Department of Natural Resources.

Krysel, C., E. Marsh Boyer, C. Parson, and P. Welle. 2003. Lakeshore Property Values and Water Quality: Evidence from Property Sales in the Mississippi Headwaters Region. Mississippi Headwaters Board and Bemidji State Univeristy.

Litton, R., R. Tetlow, J. Sorenson and R. Beatty. 1974. Water and landscape: an aesthetic overview of the role of water in the landscape. Port Washington, NY: Water Information Center, Inc.

Schueler, T. R. 2000. "The Importance of Imperviousness." The Practice of Watershed Protection. Center for Watershed Protection.

Wang, L., J. Lyons, P. Kanehl, and R. Gatti. 1997. "Influences of Watershed Land Use on Habitat Quality and Biotic Integrity in Wisconsin Streams." Fisheries: Bulletin of the American Fisheries Society. Vol 22, No. 6.

Wenger, S. 1999. A Review of the Scientific Literature on Riparian Buffer Width, Extent and Vegetation. Athens, GA: Office of Public Service and Outreach, Institute of Ecology, University of Georgia. http://outreach.ecology.uga.edu/tools/buffers/lit_review.pdf

Yanggen, D. and J. Kusler. 1968. "Natural Resource Protection through Shoreland Regulation: Wisconsin." Land Economics.

C. Major provisions and new requirements

Major provisions of the proposal include adding definitions to the rule for clarity; requiring counties to set standards for multi-unit development, mobile home parks, and campgrounds; providing exemptions for certain activities from shoreland setback and shoreland vegetation standards and establishing impervious surface standards to replace the regulation of nonconforming structures with a standard based on the size and location of structures. These changes will significantly decrease the number of variances granted by counties, allowing certain activities to be allowed with a simple administrative permit by the county. A brief description of the proposal follows.

Section NR 115.09 – Land division review

- The requirement for land division review is changed from the creation of "3 or more lots" to the creation of "one or more lots" to ensure that all new lots created meet minimum lot size requirements. This standard was added to protect prospective property owners and ensure that all lots have a compliant building location.
- If new lots are created that are divided by a stream or river, one side of the lot shall have a compliant building location. This provision will safeguard property owners by ensuring a building location on the lot.

Section NR 115.11 – Lot size and development density

- Minimum lot size and density standards have changed eliminating a distinction between sewered and unsewered areas. The new minimum lot size for all lots created after the effective date of the rule is 20,000 square feet and 100 feet of width at the building setback line and at the ordinary high water mark.
- Counties may allow development on a substandard lot if the lot is a legal lot of record that complied with the applicable lot size requirements in effect at the time the lot was recorded at the county register of deeds office and the proposed construction of a structure will comply with all other standards in the code.
- Counties are required to develop minimum area or lot size requirements for multi-family residential structures, mobile home parks and campgrounds.
- Counties may request the approval of standards for alternative forms of development with reduced lot sizes for planned unit developments, cluster developments, conservation subdivisions, and other similar alternative forms of development if they include larger shoreland buffers, larger lots sizes or larger setbacks on those lots adjacent to the water.

Section NR 115.13 – Minimum setback

- Language is added to address structures exempted by other state or federal laws from the minimum setback standards.
- Provisions are added to allow counties to exempt structures from the minimum setback if they meet certain requirements outlined in NR 115.13 (4).
- The construction of new dry boathouses is still exempted; however a maximum size of 250 square feet has been added to the rule.
- Standards are established to qualify a lot for a reduced setback if there is not a compliant building location.

Section NR 115.15 – Height Requirements

- A new section on structure height was added to protect and preserve the natural scenic beauty of lake and riverine environments.

Section NR 115.17 – Shoreland vegetation and buffers

- Language governing management of shoreland vegetation in the primary shoreland buffer is improved, resulting in a more functional buffer protecting habitat and water quality.
- Tree and shrubbery pruning is allowed. Removal of trees and shrubs may be allowed if exotic or invasive species, diseased or damaged, or if an imminent safety hazard, but must be replaced.
- Provisions are added to allow counties to exempt 7 types of activities from the shoreland vegetation provisions.

- A formula for the width of access corridors is provided, replacing the "30 feet in any 100 feet" provision, which was confusing if a lot had less than 100 feet of frontage. A second formula for lots with greater than 200 feet of frontage was also added to address larger developments adjacent to the water.

Section NR 115.19 – Impervious surfaces

- Development is regulated through the use of percentages of total impervious surface rather than through the use of a nonconforming structure provision. The impervious surface percentages of 10% for new principal structures or 15% for existing development may be exceeded up to a maximum of 20% total impervious surface within 300 feet of the ordinary high water mark if mitigation measures are implemented and maintained.
- Provisions are also included for shared impervious surfaces, expansion, enclosing existing impervious surfaces, replacements and relocation.
- Section NR 115.21 – Mitigation The mitigation provisions are now a performance measure to protect, preserve and enhance water quality and wildlife habitat while achieving natural scenic beauty.
- There is a water quality standard and a wildlife standard that the counties will have to flesh out in their individual ordinances. The water quality standard will require infiltration of runoff.
- A provision on proportionality has been added to ensure the mitigation measures required will not outweigh the impacts of the proposed project.

Section NR 115.23 – Land disturbing construction activities

- A county permit is required for land disturbing construction activities in the shoreland zone to minimize erosion and sedimentation.
- Counties shall exempt from the permit requirement activities that have already received permits from other identified permitting authorities.

D. Exemptions provided by this proposal

The proposal provides exemptions to some of the standards. Most exemptions are left to county discretion, if all of the applicable conditions are satisfied; however, the proposal does include some required exemptions resulting from other state or federal laws.

Section NR 115.13 –Minimum setback

The following structures are exempted from the minimum setback required by other state or federal laws, if all of the applicable conditions are satisfied:

- Open-sided and screened structures (s. 59.692 (1v), Wis. Stats.)
- Fishing rafts on the Wolf River and Mississippi River (s. 30.126, Wis. Stats.)
- Satellite dishes and antennas (47 CFR 1.4000 and 25.104)
- Reasonable accommodations for disabled persons (federal Americans with Disabilities Act and Fair Housing Act, and Wisconsin Open Housing Law)

Counties may permit structures within the shoreland setback if they are designed, constructed and maintained to minimize runoff to navigable waters and have as their fundamental purpose one or more of the following goals:

- To provide sate, pedestrian access to navigable waters, including public walkways or trails,
- To ensure public health and safety,
- To control significant, on-going erosion or slope stabilization,
- To maintain or improve fish and wildlife habitat, or
- To maintain or improve water quality

Section NR 115.15 – Shoreland vegetation

The following activities are exempt from the shoreland vegetation standards if all of the applicable conditions are satisfied:

- Agricultural practices and maintenance of farm drainage ditches
- Forest management activities
- Natural areas management activities
- Dam and levee maintenance activities
- Utility maintenance activities
- Road intersection and driveway line-of-sight maintenance activities
- Temporary access to project sites

Section NR 115.19 – Land disturbing activities
Counties shall exempt from the land disturbance permit requirement any land disturbing activity that:

- The Department under ch. 30, Wis. Stats., or ch. NR 216, Wis. Admin, has already granted a permit.
- A permit has been issued at a residential construction site under the uniform dwelling code in compliance with s. Comm 21.125, Wis. Admin. Code
- A notice of intent has been reviewed and approved by the Department of Commerce for a commercial construction site in compliance with s. Comm 61.115, Wis. Admin. Code.

IV. Environmental Consequences

A. Anticipated impacts on the physical and biological environment

The environmental impact of this proposal will be positive, although the resulting improvement in water quality and fish and wildlife habitat may not be seen for some time. This proposal will set in motion a process of recovery for Wisconsin's water resources while preventing further degradation of lakes, rivers, streams, and wetlands. Direct impacts resulting from the proposal include less sediment, nutrients (phosphorus and nitrogen), and other contaminants washing into water resources.

Longer, indirect impacts will be improvements to fish and wildlife habitat, increased populations of desirable fish species, increased water clarity, more stable stream banks and lake shores, more natural appearing shorelines, and more balanced aquatic ecosystems.

B. Anticipated direct and indirect economic impacts

There will be direct economic impacts as a result of the proposal on the affected parties. Positive economic impacts from cleaner water can be expected in terms of increased recreational and tourism opportunities, improved ecosystem health, enhanced aesthetics, and increased property values. Builders, contractors, building centers, and others can expect additional positive benefits from increased spending on improvements and replacements to, which are currently limited to 50% of the current equalized assessed value of a structure over the life of the structure, if a county utilizes the "50% rule". Landscapers, nurseries, and garden centers can also expect positive economic impacts as property owners restore primary shoreland buffers along lakes and rivers.

It will cost money on the part of local governments, landowners and developers to implement the proposal, although some of these costs may be offset. For example, cost savings may be realized in decreased permitting costs when projects that may currently require a variance and public hearing could be allowed with a simple administrative permit from county zoning staff.

To help counties defray the cost of ordinance amendments, the proposal allows counties to take up two years to bring their ordinance into compliance. This extended compliance period allows counties to develop their own timetable for amendments, synchronizing the amendments to the county shoreland zoning ordinance with other regularly scheduled ordinance amendments to limit costs related to informational meetings, public notices, and public hearings. Delaying implementation by two years will also counties to apply for Lakes Planning grants and River planning grants from the Department to help defray amendment costs.

A fiscal estimate for the proposal was written for the impacts on state agencies and local units of governments and is included in the attachments.

C. Impacts on social or cultural environments, the regional availability of energy or other features not previously addressed

The impacts on social and cultural environments are expected to be positive. Achieving the goal of improved water quality and fish and wildlife habitat for lakes, rivers, streams and wetlands will be an asset to the communities surrounding these water resources by providing increased recreational opportunities, improved aesthetics, gathering places for community events and celebrations or quiet places for reflection.

The Department also considered environmental justice in the analysis of these rules. The Department defines environmental justice as a continuous decision-making process that ensures participation by minority and low income populations in affected areas, along with majority populations, in order to ensure that as an outcome all people receive the benefits of clean, healthy and sustainable environments, regardless

of race, national origin, or income. As the rules are implemented, there is an expectation that environmental justice will be considered, both in terms of proving opportunities for participation by low income and minority populations and of the impacts on these groups. Such impacts might be reducing the health risk of children playing in a polluted neighborhood river, having healthier fisheries available to low-income populations that rely on fish for food, or maintenance of wild rice beds for harvest by Native American communities.

The regional availability of energy will be maintained by this proposal by allowing counties to exempt utility structures from shoreland setback requirements and by exempting utility maintenance activities from shoreland vegetation standards.

V. Alternatives and Their Impacts

A. No Action

The "no action" alternative would be a failure by the Department to meet the statutory of objectives of the Shoreland Management Program, and also would be a failure in the Department's responsibility as a trustee of Wisconsin's lakes and rivers, as mandated by the Public Trust Doctrine. This alternative would result in maintenance of inadequate minimum standards for shoreland zoning ordinances.

No action would also fail to address concerns with the existing standards raised by counties. Many of the innovative proposals from counties to update their shoreland zoning regulations are not allowed under the current structure of ch. NR 115, Wis. Admin. Code. If counties adopt these innovative techniques, the county and the Department would be open to legal challenges from other parties, for failure to meet the requirements of ch. NR 115, Wis. Admin. Code.

If no action were taken, property owners would also continue to be frustrated with the inability to get permits for improvements to nonconforming structures, and with the cost and delay associated with getting variances.

B. Selection of Different Standards

An advisory committee of affected parties and other stakeholders, along with work groups and focus groups throughout the process that focused on very specific issues, developed the proposed rule. Input from the public on the rule proposal was also gathered through listening sessions and a first round of public hearings. The rule proposal is intended to address the major impacts of shoreland development and provide opportunities to mitigate those impacts, while allowing development to occur.

The Department believes that the provisions of the proposed rule revision represent the most integrated standards needed to address the most significant impacts of shoreland development in a cost-effective manner. Selection of different standards could either have a positive or negative effect on the environment, depending on which standard is selected. Standards that were considered by the Advisory Committee, but not included in the proposal, included establishing a wetland setback, requiring merger of title for nonconforming lots in common ownership, prohibiting boathouses and prohibiting setback averaging, because of potential negative impacts to shoreland property owners.

The standards in the rule proposal were modified and reworked based on comments from Advisory Committee members, private citizens, and representatives of organizations, such as the Wisconsin County Code Administrators, Wisconsin Campground Owners Association and the Wisconsin Housing Alliance. The resulting proposal reflects, as closely as possible, a compromise position. The rule proposal cannot satisfy all people or groups on all issues. The Department has used extensive public outreach to develop standards based on public input, and believes that the proposal is ready for public hearings.

C. Legislative Alternative: Rely Solely on State Implementation of Standards with No Option for Local Involvement

The proposal shall be implemented and enforced as minimum statewide standards through local ordinances with the state acting as an oversight entity. The alternative of implementing and enforcing the standards at the state level might result in a more consistent approach, but it is unlikely that enough staff resources would be made available for adequate implementation, monitoring, and enforcement. In addition, a statewide approach would remove the aspect of local control and eliminate the potential for counties to

develop more protective standards to meet their specific resource needs. As a result, this alternative may be ultimately more detrimental to the environment.

The department intends to prepare a model ordinance to afford some consistency to local governments who wish to adopt the model. Other communities will prefer to use their own ordinance format; however, local adoption and administration of ordinances is expected to result in higher compliance rates as communities work together to develop ordinances that meet the minimum statewide standards, but also meet local resource protection goals. Administration at the local level, rather than the state level, is closer to the source of the issue, driven by local officials and ultimately more acceptable to the regulated community.

EA ATTACHMENT 1

SUMMARY OF RULE REVISION ACTIVITIES

Date	Activity Summary
October 16, 2002	NR 115 Advisory Committee Invitation letter mailed
October 22, 2002	Press release: "State Shoreland Protection Standards to be Reviewed"
October 24, 2002	E-mail update sent to ~ 250 people regarding the rule revision process and formation of the Advisory Committee
November 11, 2002	Follow-up letter mailed to NR 115 Advisory Committee members
November 12, 2002	Press release: "Advisory Committee Formed to Update Shoreland Protection Rules"
November 14, 2002	E-mail update sent to ~ 475 people regarding the new NR 115 rule revision web-page
November 21, 2002	First NR 115 Advisory Committee meeting
December 12, 2002	Second NR 115 Advisory Committee meeting
January 21, 2003	E-mail update sent to ~ 600 people regarding Advisory Committee meeting agendas, and research summary on shoreland buffers
January 22, 2003	Press Release: "Committee Considers Shoreland Protection Options"
January 23, 2003	Letter mailed to ~ 25 people regarding Advisory Committee meeting agendas, notes and research summary on shoreland buffers
January 30, 2003	Third NR 115 Advisory Committee meeting
January 31, 2003	Press Release: "State Gets Input on Revising Shoreland Protection Rules"
February 27, 2003	E-mail update sent to ~ 600 people regarding Advisory Committee meetings with shoreland buffers, and nonconforming uses and structures option packages
March 4, 2003	Press Release: "Research Revealing Harmful Effects of Shoreline Development on Fish"
March 17, 2003	Letter mailed to ~ 25 people regarding Advisory Committee meetings with shoreland buffers, and nonconforming uses and structures option packages
March 18, 2003	Press Release: "Shoreland Rule Revision Committee to Address Nonconforming Structures"
March 24 – 25, 2003	Fourth NR 115 Advisory Committee meeting
April 1, 2003	E-mail update sent to ~ 800 people regarding a summary of the March Advisory Committee meeting on nonconforming regulations
April 11 – 13, 2003	Wisconsin Lakes Convention with session providing update on the NR 115 Rule Revision process.
May 1, 2003	Letter mailed to ~ 35 people regarding Advisory Committee meeting and option package for nonconforming regulation
May 2, 2003	E-mail update sent to ~ 900 people regarding Advisory Committee meeting and option package for nonconforming regulation
May 6, 2003	Fifth NR 115 Advisory Committee meeting
May 13, 2003	Letter mailed to ~ 40 people and e-mail update sent to ~ 900 regarding the summary information on nonconforming regulation including a definition package and summary PowerPoint presentation
May 28, 2003	Wisconsin Water Law Conference with session to discuss NR 115 Rule Revision Process and update on the Advisory Committee progress
June 10, 2003	Letter mailed to ~ 40 people and e-mail update sent to ~ 900 people regarding Advisory Committee meeting and summary information and option package on shoreland development density and impervious surfaces.
June 17, 2003	Press Release: "Shoreland Advisory Committee Makes Progress Addressing 'Nonconforming' Structures"
June 24, 2003	Sixth NR 115 Advisory Committee meeting
July 24 – August 20, 2003	NR 115 Work Group Meetings: Agriculture, Alternative Development, Forestry/Natural Lands, Recreation Areas, and Urbanized Waters
August 13, 2003	E-mail update sent to ~ 900 regarding the August Advisory Committee

	meeting agenda and summary of workgroup activities
August 26, 2003	Seventh NR 115 Advisory Committee meeting
September 23, 2003	E-mail update sent to ~ 900 regarding Advisory Committee meeting and draft summary document for public listening sessions
October 2003	Wisconsin Natural Resources magazine article: "Life on the Edge"
October 9, 2003	Eighth NR 115 Advisory Committee meeting
October 28, 2003	Press Release: "Listening Sessions Set on Shoreland Protection Rule Proposals" Letter mailed to ~ 55 people and e-mail sent to ~ 900 people regarding the public listening session announcement, listening session brochure and the Advisory Committee preliminary proposal to update NR 115
November 11 – December 11, 2003	Eight listening sessions held in Spooner, Lake Tomahawk, Eau Claire, Onalaska, Grand Chute, Crivitz, Madison, and Waukesha
February 19, 2004	Meeting with Great Lakes Indian Fish and Wildlife Commission (GLIFWC) to give an update on the NR 115 Rule Revision process
March 3 – 4, 2004	Meeting with Northern Region zoning and land conservation staff with session providing an update on the NR 115 Rule Revision process
March 18, 2004	E-mail update sent to ~ 900 regarding the agenda for the March Advisory Committee meeting and summary of listening session comments
March 24, 2003	E-mail update sent to ~ 900 postponing the March Advisory Committee Meeting and rescheduling for May
April 15 – 17, 2004	Wisconsin Lakes Convention with session providing update on the NR 115 Rule Revision process
April 22, 2004	UWEX Local Government Center WisLine Series on Local Land Use Planning and Zoning: "Managing Wisconsin's Shorelands (NR 115 Update)"
May 3, 2004	E-mail update sent to ~1300 people regarding the May 18 NR 115 Advisory Committee meeting with meeting information
May 13, 2004	E-mail update sent to ~1300 people regarding the May 18 NR 115 Advisory Committee meeting with a copy of the first draft of proposed changes
May 18, 2004	Ninth NR 115 Advisory Committee meeting to review first draft of proposed changes
May 25, 2004	Press Release: "Revisions to Shoreland Rules to Take Extra Time"
June 1, 2004	E-mail update sent to ~1300 people regarding the outcome of the May 18 NR 115 Advisory Committee meeting with information on the June 10 NR 115 Advisory Committee meeting
June 10, 2004	Tenth NR 115 Advisory Committee meeting to review continue review of first draft of proposed changes
June 14, 2004	E-mail update sent to ~1300 people regarding the outcome of the June 10 NR 115 Advisory Committee meeting
June 16, 2004	Letter mailed to ~85 people regarding the outcome of listening sessions and future work of the NR 115 Advisory Committee
August 12, 2004	E-mail update sent to ~1300 people regarding August 24 NR 115 Advisory Committee meeting with meeting information
August 18, 2004	E-mail update sent to ~1600 people regarding August 24 NR 115 Advisory Committee meeting with a copy of the second draft of proposed changes
August 24, 2004	Eleventh NR 115 Advisory Committee meeting to review second draft of proposed changes
September 1, 2004	Letter mailed to ~400 people regarding future work of the NR 115 Advisory Committee
September 2, 2004	E-mail update sent to ~1600 people regarding the outcome of the August 24 NR 115 Advisory Committee meeting with information on the October Advisory Committee meeting
September 27, 2004	Wisconsin Corporation Counsel meeting with session providing update on the NR 115 Rule Revision process
October 20, 2004	E-mail update sent to ~1600 people regarding the October 26 NR 115 Advisory Committee meeting with a copy of the third draft of proposed changes

October 20 – 21, 2004	Wisconsin County Code Administrators Fall Conference with session providing update on the NR 115 Rule Revision process
October 22, 2004	First meeting with Wisconsin Association of Campground Owners (WACO) to discuss campground proposals
October 26, 2004	Twelfth NR 115 Advisory Committee meeting to review third draft of proposed changes
November 2, 2004	E-mail update sent to ~1600 people regarding the outcome of the October 26 NR 115 Advisory Committee meeting with a summary information
November 12, 2004	E-mail update sent to ~1600 people regarding the November 16 NR 115 Advisory Committee meeting with a copy of the fourth draft of proposed changes
November 16, 2004	Thirteenth NR 115 Advisory Committee meeting to review fourth draft of proposed changes
December 22, 2004	E-mail update sent to ~1600 people regarding the November 16 NR 115 Advisory Committee meeting with information on a January Advisory Committee meeting
January 4, 2005	E-mail update sent to ~1600 people regarding a January 5 NR 115 Advisory Committee meeting with a copy of the fifth draft of proposed changes
January 5, 2005	Fifth draft of proposed changes distributed to NR 115 Advisory Committee members for review (Members decided against holding a meeting to review fifth draft)
January 28, 2005	Second meeting with Wisconsin Association of Campground Owners (WACO) to discuss campground proposals
February 17, 2005	UWEX Local Government Center WisLine Series on Local Land Use Planning and Zoning: "Managing Wisconsin's Shorelands (NR 115 Update)"
February 18, 2005	E-mail update sent to ~1600 people regarding January comments received from the NR 115 Advisory Committee on the fifth draft of proposed changes and a summary of the timetable for the process from this point forward.
March 21, 2005	Presentation to the Inter-County Coordinating Committee comprised of Columbia, Dodge, Green Lake, Jefferson and Sauk counties. Membership includes county board members and planning and zoning staff. Discussed Draft 5 and the proposed revisions to NR 115.
April 8, 2005	Wisconsin County Code Administrators Spring Conference with session providing update on the NR 115 Rule Revision process
April 28-30	Lake Home and Cabin Show with presentations on shoreland stewardship and a session providing an update on the NR 115 Rule Revision process. In addition there will be several shoreland displays with information related to the rule revision and how the public can get involved.
April 28 – 30, 2005	Wisconsin Lakes Convention with 3 sessions providing update on the NR 115 Rule Revision process
May 5-6, 2005	Wisconsin Association of Corporation Counsels – presentation and discussion on the revision to NR 115
May 25, 2005	DNR Board authorized public hearings for NR 115
June 24, 2005	NW Lakes Convention – presentation and discussion on the revision to NR 115
August 5, 2005	Wisconsin County Code Executive Board Meeting - presentation and discussion on the revision to NR 115
August 12, 2005	Rice Lake Technical College Regional Lakes Workshop - presentation and discussion on the revision to NR 115
September 6, 2005	WCCA meeting to discuss revisions to NR 115
October and November 2005	Met or talked with advisory committee members individually about the revision process and potential changes to the code based on hearings
December 7, 2005	WCCA meeting to discuss revisions to NR 115
December 8, 2005	Land and Water conservation Association Meeting - presentation and discussion on the revision to NR 115
January 12, 2006	Lakes Partnership Meeting - presentation and discussion on the revision to NR 115

January 19, 2006	WCCA Executive Board Meeting - presentation and discussion on the revision to NR 115
February 7, 2006	Northern Region Zoning and Land Conservation Meeting - presentation and discussion on the revision to NR 115
March 29-31, 2006	WCCA Spring Conference - presentation and discussion on the revision to NR 115
April 6, 2006	WAPA Spring Conference - presentation and discussion on the revision to NR 115
April 20-22, 2006	Wisconsin Association of Lakes annual convention - presentation and discussion on the revision to NR 115
April 21-23, 2006	Lake Home and Cabin Show- Minneapolis – information available on the rule revision also a sign up sheet for updates on the revision
April 28-30	Lake Home and Cabin Show – Milwaukee - information available on the rule revision also a sign up sheet for updates on the revision
June 8, 2006	Advisory Committee Meeting – discuss public hearing outcome, disseminate comment summary, outline process and discuss potential policy modifications
June 14, 2006	Shoreland and Shallows Summit – Discussions on shoreland management in a broader context in relation to other environmental programs related to the near shore area.
July 20, 2006	Coastal Workshop in Ashland - presentation and discussion on the revision to NR 115
August 1, 2006	Impervious surface focus group meets
August 2, 2006	Mitigation focus group meets
August 30, 2006	Mitigation focus group meets
August 31, 2006	Impervious surface focus group meets
October 10-12, 2006	Meetings with 6 NW counties on the revisions to NR 115
October 17-19	Meetings with 5 NE counties on the revisions to NR 115
October 24-26	Meetings with 5 centrally located counties on the revisions to NR 115
February 13, 2007	Northern Region Zoning and Land Conservation Meeting - presentation and discussion on the revision to NR 115
February 27, 2007	Implementation focus group meets
March 13, 2007	West Central Zoning Administrators meeting - presentation and discussion on the revision to NR 115
March 15, 2007	Wisconsin Campground Owner's Association annual meeting - presentation and discussion on the revision to NR 115
March 21, 2007	Implementation focus group meets
March 28-30, 2007	WCCA Spring Convention - presentation and discussion on the revision to NR 115
April 26-28, 2007	Wisconsin Association of Lakes annual convention – discussion on the revision to NR 115
May 22-23, 2007	Request authorization for a second round of public hearings from the Natural Resources Board.

EA ATTACHEMENT 2

NR 115 ADVISORY COMMITTEE MEMBERSHIP

LOCAL GOVERNMENT REPRESENTATIVES

Wisconsin County Code Administrators

- Mr. Phillip Gaudet, Washington County
- Mr. Karl Kastrosky, Bayfield County
- Ms. Pam Labine, Forest County

County Planning Zoning and Committee Members

- Mr. Neal Nielsen III, Vilas County (resigned May, 2004)
- Ms. Nancy Russell, Walworth County

Municipal Associations

- Mr. Mark O'Connell and Mr. Matthew Stohr, Wisconsin Counties Association
- Mr. Richard Stadelman, Wisconsin Towns Association
- Mr. Roland Tonn, Wisconsin Chapter of American Planning Association

PUBLIC RESOURCE REPRESENTATIVES

- Mr. Elmer Goetsch, Wisconsin Association of Lakes
- Ms. Lori Grant, River Alliance of Wisconsin
- Mr. Paul Mongin, Conservation Congress (resigned May, 2004)
- Mr. William Pielsticker, Trout Unlimited
- Mr. Jim Wise, Environmentally Concerned Citizens of Lakeland Areas, Inc.(resigned July 2005)

RIPARIAN OWNER REPRESENTATIVES

- Mr. Earl Cook, Springbrook
- Mr. Jim Libert, Hartland
- Mr. Chuck Mitchell, Wauwatosa
- Mr. Marc Schultz – Onalaska
- Mr. Jay Verhulst, Arbor Vitae (representing Taxpayers for Fair Zoning)

ACADEMIC REPRESENTATIVES

- Mr. Scott Craven, University of Wisconsin – Madison (wildlife habitat issues)
- Mr. Mike Dresen, University of Stevens Point, Center for Land Use Education (land use issues)
- Mr. Paul McGinley, University of Wisconsin – Stevens Point (water quality issues)

PRIVATE BUSINESS REPRESENTATIVES

- Mr. Miles Benson, Governor's Council on Forestry
- Mr. Jerry Deschane, Wisconsin Builders Association
- Mr. Paul Kent, Riparian Owners and Marine Contractors Association
- Mr. Tom Larson, Wisconsin Realtors Association
- Mr. John Larson, Applied Ecological Services
- Mr. Glenn Schiffmann, Natural Resources Board Appointee
- Mr. Paul Zimmerman, Wisconsin Farm Bureau Federation

Marty Melchoir, Rich Bogovich, and Denny Canneff also served on the Committee for the River Alliance of Wisconsin.

Alternates who served on the Advisory Committee included Tom Onofrey, Marquette County, for Karl Kastrosky; Larry Konopacki for Paul Kent; Carol Nawrocki for Richard Stadelman; and John Kassner for Jerry Deschane.

EA ATTACHEMENT 3

NR 115 WORK GROUP MEMBERSHIP

AGRICULTURE WORK GROUP

- Mr. Keith Foye, Wisconsin Department of Agriculture, Trade and Consumer Protection
- Mr. Dick Gorden, Farmer
- Ms. Cindy Jarvis, Wisconsin Farm Bureau Federation
- Mr. Marty Melchoir, C.F.P., Stream Ecologist, Inter-Fluve, Inc.
- Mr. William Pielsticker, Trout Unlimited (NR 115 Advisory Committee member)
- Mr. Richard Stadelman, Wisconsin Towns Association (NR 115 Advisory Committee member)
- Mr. Paul Zimmerman, Wisconsin Farm Bureau Federation (NR 115 Advisory Committee member)

ALTERNATIVE DEVELOPMENT WORK GROUP

- Mr. Jack Broughton, Bielinski Homes
- Mr. Mike Dresen, University of Stevens Point, Center for Land Use Education (NR 115 Advisory Committee member)
- Mr. Karl Kastrosky, Bayfield County (NR 115 Advisory Committee member)
- Mr. John Larson, Applied Ecological Services (NR 115 Advisory Committee member)
- Mr. William O'Connor, Wisconsin Association of Lakes

FORESTRY/NATURAL LANDS WORK GROUP

- Mr. Miles Benson, Governor's Council on Forestry (NR 115 Advisory Committee member)
- Mr. Al Barden, Wisconsin Woodland Owners Association
- Mr. Earl Gustafson, Wisconsin Paper Council
- Ms. Pam Labine, Forest County (NR 115 Advisory Committee member)
- Ms. Lynn Markham, University of Stevens Point, Center for Land Use Education
- Ms. Collette Mathews, Wisconsin County Forests Association
- Mr. Matthew Stohr, Wisconsin Counties Association (NR 115 Advisory Committee member)
- Mr. Jim Wise, Environmentally Concerned Citizens of Lakeland Areas, Inc. (NR 115 Advisory Committee member)
- Mr. Darrell Zastrow, Director, Bureau of Forest Sciences, Wisconsin Department of Natural Resources

RECREATION AREAS WORK GROUP

- Mr. Earl Cook, Springbrook (NR 115 Advisory Committee member)
- Mr. Mike Dresen, University of Stevens Point, Center for Land Use Education (NR 115 Advisory Committee member)
- Ms. Kate Fitzgerald, Section Chief, Land Management, Wisconsin Department of Natural Resources
- Mr. Elmer Goetsch, Wisconsin Association of Lakes (NR 115 Advisory Committee member)
- Ms. Dorothy Pasko, Moose Lake Resort/Sawyer County Resort Owners

URBANIZED WATERS WORK GROUP

- Mr. Jeff Christensen, Project Coordinator, Radtke Contractors, Inc.
- Mr. Jerry Deschane, Wisconsin Builders Association (NR 115 Advisory Committee member)
- Mr. Phillip Gaudet, Washington County (NR 115 Advisory Committee member)
- Ms. Kathy Moore, Senior Planner, Waukesha County Planning and Zoning Division
- Cheryl Nenn, Milwaukee River Corridor Director, Friends of Milwaukee's Rivers
- Mr. Roland Tonn, Wisconsin Chapter of American Planning Association (NR 115 Advisory Committee member)

All NR 115 Advisory Committee members were able to provide input on work group issues, even if they did not attend a work group meeting.

EA ATTACHEMENT 4

NR 115 FOCUS GROUP MEMBERSHIP

IMPERVIOUS SURFACE FOCUS GROUP

- Earl Cook – Riparian, Springbook and AC member
- Roland Tonn – Wisconsin Chapter of the American Planning Association and AC member
- Nancy Russell – Planning and Zoning Committee, Walworth County and AC Member
- Tom Larson – Wisconsin Realtors Association and AC member
- Marc Schultz – Riparian, Onalaska - retired UW Extension and AC member
- Phil Gaudet – Wisconsin County Code Administrators, Washington County and AC member
- Jay Verhulst – Taxpayers for Fair Zoning and AC member
- Paul Kent – Marine Contractors Association and AC member
- Jerry Deschane – Wisconsin Builder's Association and AC member
- Chuck Mitchell – Citizens for Scenic Wisconsin and AC member
- Bud Styer and Wayne Schultz – Wisconsin Campground Owner's Association
- Ezra Meyer – Wisconsin Association of Lakes, technical specialist
- Lynn Markham – Land Use Education Center, Steven's Point
- Jeremy Balousek, P.E. Dane County Land Conservation Department
- Kevin Kirsch – Wisconsin Department of Natural Resources, stormwater engineer
- Paul McGinley - University of Wisconsin – Stevens Point

MITIGATION FOCUS GROUP

- Elmer Goetsch – Wisconsin Association of Lakes and AC member
- Karl Kastrosky – Wisconsin County Code Administrators, Bayfield County and AC member
- John Larson – Applied Ecological Services and AC member
- Lori Grant – Wisconsin River Alliance and AC member
- Pam Labine – Wisconsin county code Administrators, Forest County and AC member
- John Kisiel – Wisconsin Builder's Association and AC member
- Lori Severson – Wisconsin Campground Owner's Association
- Carroll Schaal – Wisconsin Department of Natural Resources – Lakes Program
- Steve Greb – USGS
- Mike Meyer – Wisconsin Department of Natural Resources – Science Services, Research
- Tom Bernthal – Wisconsin Department of Natural Resources – Wetland Program

IMPLEMENTATION FOCUS GROUP

- Matthew Stohr, Wisconsin Counties Association
- Michael Stapleton – Zoning Administrator – Columbia county
- Rebecca Frisch – Zoning Administrator – Langlade County
- Daniel Miller – Zoning Administrator – Lincoln County
- Peter Tarnowski – Zoning Administrator – Manitowoc County
- Jim Burgener – Zoning Administrator – Marathon County
- Tom Onofrey – Zoning Administrator – Marquette County
- Pete Wegner – Zoning Administrator – Oneida County

Note: In addition, each county was sent a preliminary draft of NR 115 at the time the implementation focus group was meeting. All the counties were given 6 weeks to comment on the draft for implementation and administrative issues before the 2007 public hearing draft was developed.

All NR 115 Advisory Committee members were able to provide input on work group issues, even if they did not attend a work group meeting.

EA ATTACHMENT 5

NR 115 2005 PUBLIC HEARING COMMENT SUMMARY

This document is a summary of the approximately 50,658 comments from nearly 12,000 individuals which were received during the public comment period in the summer of 2005. This summary does not contain each individual comment received. For a copy of the complete comment database please contact Toni Herkert at toni.herkert@wisconsin.gor of (608) 266-0161

DEFINITIONS AND APPLICABILITY

1. Structure - 300 comments requesting changes in the definition. Too broad, overly encompassing and confusing.
2. Ordinary maintenance and repair – 73 comments requesting clarification in definition
3. Structural repair – 72 comments requesting clarification in definition
4. Shoreland wetland zoning – 22 comments indicate wetland definition is confusing and request clarification on permitted uses – can they only be allowed with a permit?
5. Native vegetation – 8 comments requested a definition for native vegetation
6. Back lot – 8 comments requested a definition for back lot
7. Access lot – 8 comments requested a definition of access lot or keyhole development
8. Campgrounds – 16 comments stating the definition of campsite, non-permanent, camping unit and residence need clarification. In addition, expansion principles and lot sizes are not appropriate.
9. Additional definitions requested include: basal area, boathouse, parcel, common ownership, substandard lot, applicable standards, unstable or steep conditions, administrative permit, accessory uses, out lot, best management practices and ground layer vegetation.
10. Comments suggested modifications to the following definitions: mobile home park, gravel, natural areas management activity, residence, mitigation, shoreland zone, impervious surface, open fence, replacement, vegetative buffer, lot, shoreland frontage and land disturbing activities (should be consistent with NR 151)

SETBACKS

<u>11 Specific Opposition Issues</u>

1. Measuring setbacks - NR 115.13(1)(b) – 159 comments indicated the retroactive effective date will cause problems and may make a number of structures nonconforming
2. Permit required - NR 115.13(2) – 154 comments indicated this provision will require property owners to obtain another permit, pay another fee and could prolong the development approval process
3. One stairway per 100 feet of frontage - NR 115.13(4)(b) 154 comments indicated that this should only apply to new lots and that replacing walkways in order to reduce stormwater runoff could be very expensive
4. Signs and flagpoles - NR115.13(4)(c) – 586 comments opposed to this provision is unnecessary and difficult to enforce
5. Significant on-going erosion – NR 15.13(4)(f) - 153 comments opposed to demonstrating on-going erosion for erosion control structures
6. Steps and landings – NR 115.13(4)(n) – 562 comments indicating size limitations are a clear safety issue
7. Boathouses meeting 75 foot setback – 221 comments indicated this provision would be problematic
8. Accessory structure regulation – 212 comments indicated regulation too strict
9. Prohibiting storage of a boat or ice shanty within 75 feet – 218 comments indicated regulation too strict
10. Definition of OHWM for Lake Michigan and Lake Superior – 43 comments indicated that the current definition is not appropriate to measure setbacks on the Great Lakes
11. Setback averaging – 422 comments requested modifications to this provision ranging from allowing averaging for a garage and vacant lots to be utilized in the averaging calculation

2 Specific Issues of Support

1. Greater setback – 20 comments indicated a need to work towards the 75 foot setback and no less and setbacks suggested of 90 and 100 feet
2. Wetland setback – 20 comments indicated that a 10 to 75 foot wetland setback or buffer should be included in NR 115
3. Exempted structures – 11 comments regarding the regulation to be too permissive
4. OHWM and wetland determinations – 4 comments concerned with the regulation potentially allowing a structure closer than 75 feet

General Comments: 74 generally opposed each with minimal mention, 12 neutral, 18 specifically support and 53 comments support but stated regulation was too permissive

Of special note – out of the 1,227 comments received in the setback section, only 2 comments were opposed to the 75 foot setback because it was to restrictive.

LAND DIVISION

2 Specific Opposition Issues

1. Division of land – create or reconfigure language – 154 comments indicated this provision would add additional regulatory and oversight burdens to already financially strapped county zoning administrations and staff
2. Substandard lots in common ownership – 158 comments indicated that counties currently have the authority to regulate these lots, therefore, the regulation is unnecessary

Additional Comments

1. Reflect standards in section 236.45 Wisconsin Statutes – 4 comments felt consistency with NR 115 and plat review statute was important
2. NR 115.09(2) – 4 comments indicate that the use of the word reconfigure in this section is confusing
3. Streams bisecting properties – 3 comments confused by regulation

General Comments: 9 generally opposed, 8 neutral, 4 specifically support and 5 comments support but stated regulation was too permissive

LOT SIZE

4 Specific Issues of Support

1. Minimum lot sizes – 9042 comments indicated that lot sizes should be 20,000 square feet with a width of 150 feet or more regardless of sewer
2. Multi-family – 40 comments indicated multi-family development should be required to meet the same lot size and density standards as single family development
3. Access lots – 14 comments indicated that access lots should have the same requirements for size, buffers, width, etc as other lots
4. Keyhole development – 9 comments indicated no keyhole development allowed and 10 comments indicated if keyholing is allowed, the lots should meet the same requirements as a residential lot

4 Specific Opposition Issues

1. Multi-family – 243 comments indicate the lot sizes for multi-family development are too large and will make condo developments prohibitively expensive
2. Lot widths – 644 comments indicated that the new mechanism for measuring lot widths would result in new nonconformities
3. Back lots – 89 comments indicate that this regulation is unnecessary in this rule

4. Access lots (keyhole development) – 89 comments indicate that giving counties this flexibility may have a significant adverse impact on the value and usability of lots

Additional Comments

1. Campgrounds – 17 comments indicate more clarity or flexibility is necessary in the lot size section for campgrounds
2. Other lot size suggestions – no less than 40,000 sq. ft., 43,000 sq. ft with 150 ft. of frontage and a 300 ft. depth, 43,560 sq. ft.,
3. Minimum lot sizes –8 comments indicate that 7,000 sq. ft. for a single family dwelling is too large – other options include 6,000 and 5,000 sq. ft.

General Comments: 43 generally opposed, 15 neutral, 5 specifically support and 35 comments support but stated regulation was too permissive

VEGETATIVE BUFFERS

7 Specific Issues of Support

1. Primary buffer – 9015 comments indicated that the primary buffer should be increased to 50 feet or more
2. Primary buffer – 11 comments indicated that the primary buffer should be increased to 75 feet or more
3. Wetland buffer – 9,035 comments indicated that wetland buffer standards should be required in NR 115
4. Vegetation plans – 15 comments indicated strong support for vegetation plans
5. Lawns – 10 comments indicated that existing lawns should be replace with natural vegetation within the primary buffer
6. Native vegetation – 13 comments indicated that the final rule should require a diversity of native vegetation in the primary buffer
7. Access corridor – 7 comments stated the corridor requirements were too large and fragmented habitat. One access corridor is sufficient regardless of the frontage.

5 Specific Opposition Issues

1. Vegetation plans – 619 comments indicated that this requirement will add increased costs and could unreasonably delay the construction process. Counties do not have the staff or expertise to properly review such plans
2. Multi-unit development plans – 155 comments indicated the new formula will create more nonconforming projects and the costs for development and implementation would be significant and ongoing
3. Access Corridor – 162 comments indicated that the size limitations on access corridors is too small for smaller lots
4. Primary buffer – 7 comments specifically objected to establishing vegetation in the primary buffer

Additional Comments

1. Ban on fertilizer – 2 comments indicated a desire to ban the use of any fertilizer within the 75 foot setback area
2. Rivers – 32 comments indicated that rivers should be treated differently than lakes with regards to the vegetative buffer requirements. Buffer requirement is not appropriate for small lots on rivers.
3. Administration and Enforcement – 7 comments indicated that the vegetative provisions would be difficult to administer and enforce due to county staffing and expertise
4. Flexibility – 6 comments indicated that the counties need more flexibility in this area
5. Primary buffer – 10 comments indicated that all property owners should be required to maintain or replace vegetative buffers and that all properties should have the same buffer requirements
6. Nuisance – 15 comments indicated that vegetative buffers will increase undesirable species such as mosquitoes, snakes and other insects and pests.

General Comments – 19 comments are general housekeeping items, 17 generally opposed, 3 neutral and 16 comments support but stated regulation was too permissive.

IMPERVIOUS SURFACES

3 Specific Issues of Support

1. Limit – 9,041 comments indicated that impervious surfaces should be limited to 20% of the lot
2. Limit – 19 comments indicated that impervious surfaces should be limited to 10-15% of the lot – some said within 200-300 feet of the OHWM
3. Cap – 10 comments indicated that there should be a cap on the amount of impervious surfaces regardless of the type of development
4. More protective – 7 comments indicated that the regulations are necessary but the section is too permissive (did not provide an alternative)

3 Specific Opposition Issues

1. Limit – 385 comments were in opposition to a statewide impervious surface standard and the trigger for revegetation
2. Limit – 173 comments indicated that impervious surface limits will place unreasonable limit on the size of homes on and near waterfront property
3. Zero increase – 92 comments indicated that this stormwater runoff standard will cost homeowners thousands of dollars

Additional Comments

1. Best management practices – 6 comments supported implementation and maintenance of BMPs and cautioned the need for appropriate minimum standards of BMPs to gauge effectiveness
2. Definitions – 24 comments on the need for greater clarification for definition of impervious surface
3. Runoff – 3 comments indicated that consideration should be made as to whether the surfaces contribute to runoff
4. Small lots – 6 comments indicated that smaller lot sizes and river lots need to be taken into consideration
5. Trigger – 2 comments indicated that the trigger for mitigation should be reduced to 15% impervious cover
6. Primary buffer – 3 comments indicated that no new impervious surfaces should be allowed within 35 feet
7. Others: Different slopes should have different standards, regulations should distinguish between rater and volume of discharge, concerned about time delays of permits for this section

LAND DISTURBANCES

3 Specific Issues of Support

1. Activities – 11 comments indicated that no land disturbing activities near the water or wetlands should never be approved
2. Plans – 5 comments indicate that the need for erosion control and vegetation plans is strongly supported, but would favor firmer restrictions
3. Slopes – 4 comments indicated that filling and grading activities should be restricted on steep slopes

3 Specific Opposition Issues

1. Erosion control and vegetation plans – 153 comments indicated that this provision could be very expensive

2. Application – 3 comments indicated that this provision should only apply to riparian lots and not the entire shoreland zone
3. Conservation – 4 comments indicated that vegetative buffers, in some cases, can create a shoreland unfit for sound conservation practices

Additional Comments

1. Permits and exemptions – 13 comments pertained to requiring too many permits, not exempting enough structures or exempting too many structures
2. Other activities – 4 comments indicated that soil compaction and tree damage are associated with land disturbing activities and are not accounted for in this section
3. Staffing – 3 comments indicated that the staff requirements would be excessive therefore making the provision difficult to enforce and monitor erosion control and vegetation plans
4. Flexibility – one comment offered the suggestion to allow minimal land disturbing activities without triggering an erosion control or vegetation plan.

NONCONFORMING

5 Specific Issues of Support

1. Maintenance and Repair – 500 comments indicated that NR 115.21(4)(a)and(b), the allowance of ordinary maintenance and repair, is a good change
2. Replacement – 395 comments indicated that NR 115.21(4)(d), allowing replacement of some nonconforming structures, will greatly benefit property owners by protecting investments in their homes
3. Replacement and expansion – 41 comments indicated that NC principal structures should not be allowed to be replaced or expanded if there is a legal building site on the lot
4. 50% rule – 14 comments indicated that counties need more than the 50% rule to regulate proposed changes to principal structures
5. Appendix A – 11 comments indicated that appendix A is problematic because the maximum footprints were too large considering people can easily build up to three stories. There should be a 1,200 to 1,500 sq. ft. maximum

9 Specific Opposition Issues

1. Boathouses – 222 comments indicated that prohibiting the alteration or replacement of a boathouse foundation unless moved to a compliant location is problematic
2. NC use provision – 154 comments indicated that this prohibition exceeds the DNR's authority and the statutory protections afforded to property owners under the 50% rule
3. NC accessory structures – 154 comments indicated that the prohibition on structural alteration unless mitigation is implemented is more onerous than the current 50% rule
4. Structural alteration – 154 comments indicated the prohibition on structural alteration for principal structures unless mitigation is implemented is more onerous than the current 50% rule
5. Expansion – 154 comments indicated that the proposed footprint maximums for structures between 35 and 75 ft will severely restrict the size of expansions allowed for NC structures
6. Straddling – 155 comments indicated the need to allow more expansion beyond the 75 foot setback
7. Minimum lot size – 568 comments indicated that the minimum lot size of 7,000 sq. ft. for expansion and replacement is both arbitrary and unfair
8. Campground expansions – 843 comments indicated that only the portion of the campground being expanded should have to come into compliance with the revised NR 115.
9. Camping units – 836 comments indicated that camping units within the shoreland zone should be able to be expanded to industry specific sizes essentially replacing and existing unit

Additional Comments

1. Additional provisions – 11 comments indicated that there should be provisions for distinguishing between NC uses, structures and substandard lots and standards applicable to each circumstance

2. Organization – 8 comments indicated that this section of the code needs to be clearer. As written it is difficult to follow and could be left to interpretation, therefore, making it difficult to enforce
3. Local control – 6 comments indicated that local government should decide regulations for NC structures
4. Improvement – 4 comments indicated that in relation to NC structures, the revised code is a significant improvement over the existing NR 115 provision

Points to Ponder

- Footprint expansion limited to one-time per property, not per owner
- Could the DNR provide incentives for the removal of nonconforming structures
- Minimum size to expand should be defined by the minimum principal structure size of the zoning district where the structure resides
- It is better to apply the foundation restriction only to those accessory structures that are buildings
- The rule is unclear as to whether a landowner can elect to not replace portions of the original structure closest to the water to gain additional square footage for expansion
- Minimum lot size for expansion and replacement should be 6,500 sq. ft. consistent with the model ordinance

General Comments: 33 generally opposed, 11 neutral, 11 specifically support and 25 comments support but stated regulation was too permissive

MITIGATION

2 Specific Issues of Support

1. Septic system – 171 comments indicated that inspection and upgrading of septic systems is a good definitive mitigation standard
2. Recording – 10 comments indicated that mitigation should be contractual

3 Specific Opposition Issues

1. Mitigation – 257 comments indicated that the requirement is expensive, unfair, too subjective and will create uncertainty among property owners
2. General – 212 comments indicated that the mitigation requirements are too prescriptive and they remove local governments' ability to apply standards appropriate to local conditions
3. Recording – 7 comments indicated that recoding and monitoring of shoreland buffer restorations would be difficult

Additional Comments

1. Technical standards are needed for mitigation and the public needs easy access to them
2. Counties should be provided with state funding for additional staff needed to implement the new rules
3. The concept of mitigation should be evaluated to see if results are in the publics benefit
4. Preservation and maintenance is subjective and will cause confusion
5. Buffer mitigation will never compensate for buffer area reduction and increased development density
6. Erosion control, conservation, safety and health should become the crucial factual determination in any mitigating standard
7. Mitigation should only apply to riparian lots
8. Specify that the cost of mitigation cannot exceed a specified fraction (5%) of the overall cost of the project

General Comments: 16 generally opposed, 5 neutral, 9 specifically support and 6 comments support but stated regulation was too permissive

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING, AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to repeal NR 115.05 (3) to (6) and 115.06; to renumber NR 115.05 (2); to amend NR 115 (title), 115.01 (1) and (2), 115.05 (title), 115.05 (1) 115.07(title), (1)(a), (s)(a) and (c), (3)(intro.), (c)(note), (e), (g), (j) and (k), (4), (5)(a) to (c), (d)(intro.), (e), (f), (g)(intro.), (h) and (i); to repeal and recreate NR 115.02 and 115.03,; and to create NR 115.01 (4), 115.05 (note), 115.09, 115.11, 115.13, 115.15, 115.17, 115.19, 115.21, 115.23, 115.25 and 115.27 relating to minimum standards for county shoreland zoning ordinances.

WT-28-04

Analysis prepared by the Department of Natural Resources

Statutory authority: Sections 59.692, 227.11 (2) (a), and 281.31, Stats.

Statutes interpreted: Sections 59.69, 59.692, 59.694 and 281.31, Stats.

I. Plain Language Rule Analysis:

Background

Growing public awareness and concern for controlling water pollution led to enactment of the Federal Water Pollution Control Act Amendments of 1972. As amended in 1977, this law became commonly known as the Clean Water Act. The Act established the basic structure for regulating discharges of pollutants into the waters of the United States. Here in Wisconsin, our foresight in protecting navigable waters far exceeded that of the federal government. In response to human impacts on public waters, the Wisconsin Legislature on August 1, 1966, passed the Water Resources Act (as created by Chapter 614, Laws of 1965) that articulated the purpose and direction for shoreland zoning: "To aid in the fulfillment of the state's role as trustee of its navigable waters and to promote public health, safety, convenience, and general welfare."

Wisconsin's Water Resources Act utilized a novel approach toward comprehensive pollution control by supplementing state-level regulation of direct polluters (industries and municipal treatment plants) with county-administered zoning ordinances, sanitary codes, and subdivision regulations to control indirect pollution sources. The basic premise was to establish practical minimum standards and workable regulations in an area where there had been little experience. This act was also very important specifically for shoreland protection because the requirement to enact shoreland zoning ordinances has been interpreted to be part of the active public trust duty of the state of Wisconsin, which requires the state to protect navigable waters not only for navigation, but also to protect and preserve those waters for fishing, recreation and scenic beauty.

Authority

The proposed amendments to ch. NR 115 are intended to allow a county more flexibility in how they regulate land use in shorelands, and to give shoreland property owners more land use options, while still protecting the public interest in navigable waters and adjacent shorelands.

Section 281.31(6), Stats., provides: "Within the purpose of sub. (1), the department shall prepare and provide to municipalities general recommended standards and criteria for . . . navigable water protection regulations and their administration." Section 59.692 (6), Stats., provides that "if the department, after notice and hearing, determines that a county has enacted an ordinance that fails to meet the shoreland zoning standards, the department shall adopt such an ordinance for the county." Section 59.692 (1) (c), Stats., defines "shoreland zoning standard" to mean "a standard for ordinances enacted under this section that is promulgated as a rule by the department." Section 227.11(2)(a), Stats., gives the

Department the authority to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

In addition, the rule revision attempts to remove duplication with other Department administrative codes and allow deference to other codes with overlapping jurisdictions. Section 30.27 Stats., provides for the Lower St. Croix River preservation including subsection (2a) which states that "as soon as possible after May 7, 1974, the department shall adopt, by rule, guidelines and specific standards for local zoning ordinances which apply to the banks, bluffs and bluff tops of the Lower St. Croix River." Under this statute, the Department has promulgated NR 118, Wis. Adm. Code which specifies standards for development in the Lower St. Croix Riverway. Section NR 115.02(6) of the revision allows the Lower St. Croix Riverway zoning ordinance that is adopted by a county in compliance with the requirements of s. 30.27 Stats., and ch. NR 118 to be adopted and administered as the county's shoreland zoning ordinance for those areas within the Riverway. This removes the criteria that areas within the Riverway boundary apply both the shoreland zoning ordinance and the Lower St. Croix riverway ordinance. Areas outside of the Riverway boundary under shoreland zoning would still be required to adhere to the county shoreland zoning ordinance which meets or exceeds the standards within this chapter.

The Department has also tried to minimize duplication with other agency codes in this revision. Cross reference and deference to Commerce codes, including Private Onsite Wastewater Treatment Systems - Comm 83, the Uniform Dwelling Code – Comm 21.125, Commercial Building Code – Comm 61.115 and sections of the Uniform Plumbing Code – Comm 82.36 and 82.365 are incorporated in the draft. In addition, cross reference and deference has been incorporated for other natural resources programs including the in-water permitting program under ch. 30, Stats., and chs. NR 151 and 216 for stormwater management and erosion control.

Revision Rationale

In response to the increasing impacts on public waters from adjacent shoreland development, the amount and intensity of development today in comparison to 40 years ago and the resulting pressures on our public resources from private land owners and water recreationalists alike, the state launched a broad-based effort to update the shoreland protection standards originally promulgated in 1968. NR 115 was created to protect water quality, fish and wildlife habitat and scenic beauty along navigable lakes and rivers by establishing statewide minimum standards including minimum lot sizes, how far structures must be setback from the water's edge, and limits on removing trees and other vegetation. Controlling the density of development along the waters and creating a buffer around them was the best management practice of the time. With 40 years of growth the way in which we develop the land and the associated pressures on the resource has drastically changed. What once sufficed as a small summer weekend cottage has now grown into a demand for year-round, winterized and much larger homes. The lots that were created years ago may not be capable of handling the increased stress without compromising the integrity of the vary resource that draws our attention in the first place. Over time it has become increasingly clear that change is needed to clarify standards, provide flexibility, protect the resources, improve consistency and local zoning authorities' ability to implement these standards through their zoning ordinances in a consistent, timely and enforceable manner.

In addition, many of the provisions in the original NR 115 were vague and difficult to interpret and enforce. The revision process represents an attempt to move towards a clear rule with little room for misinterpretation. The proposed amendments to NR 115 are intended to allow a county more flexibility in how they regulate land use in shorelands but still provide the determinations necessary for consistent interpretation among counties. The proposed amendments also provide shoreland property owners more land use options while protecting the very values and resources that make these destinations attractive.

Revision Process

The revision package is based on concepts developed, negotiated and compromised by a very diverse and well-represented advisory committee. The dedication and determination of these individuals proves how important our water resources and adjacent shorelands are in the state.

These amendments are the result of nearly 5 years of work by this group and numerous opportunities for public comment. The Department held 11 public hearings in July and August of 2005 and 8 listening sessions in the fall and winter of 2002. Both venues were an opportunity for the public to review and comment on the draft proposals generated together by the Department and the Advisory Committee.

As a requirement, public hearings are held to generate public comment. The Department far exceeded any legal requirement by holding 11 public hearings around the state. Over 1,000 people attended the hearings and during the public comment period over 12,000 comments we collected.

Listening sessions were added as an additional step in the traditional rule revision process because the Department recognized this issue needed special consideration and debate in an open, informative, honest and participatory forum. Over 850 people attended eight listening sessions that were held around Wisconsin in November and December 2003. Comments were accepted on prepared comment sheets, as oral comments at the sessions, and as written comments submitted before December 31, 2003. Nearly 1100 comments were submitted regarding the NR 115 Advisory Committee recommendations.

Public hearing and listening session comments are summarized on the rule revision website at:

http://www.dnr.state.wi.us/org/water/wm/dsfm/shore/news.htm.

In addition to the public hearings and listening sessions, the Bureau of Watershed Management staff have kept a list of interested parties by e-mail and hard mail to provide timely updates to those interested in the process and allow those parties an opportunity to comment on newly generated materials including each draft of the code.

With all the attention and public comment on the revision to NR 115, four main themes can be derived from a majority of the comments:

- Keep the regulations simple,
- Make the regulations enforceable,
- Protect our water resources, and
- Provide communities the flexibility to determine how to best administer the minimum standards.

To that extent, the implementation of the revised rules provide for the following:

Major provisions and new requirements
Major provisions of the proposal include changes to vegetation management in the primary shoreland buffer and changes to regulation of structures within the minimum setback. New requirements include the removal of the nonconforming structure provisions and replacement with impervious surface standards. Counties may still choose to regulate nonconforming structures with traditional standards; however, the new standards will regulate a structure based on its impact to the resource, not on when or how the structure was built. In addition, the code contains changes to the minimum lot size requirements, including the directive for counties to develop standards for multi-unit residential development, mobile home parks, and campgrounds; a reduced setback option as well as allowing development on substandard lots is included in this draft. Finally, a section on mitigation standards was added to the code to help balance the flexibility provided in this chapter.

II. Federal Regulatory Analysis:

There is no specific existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

III. State Regulatory Analysis:

Wisconsin's Shoreland Management Program is a partnership between state and local government that requires development near navigable lakes and streams to meet statewide minimum standards. Each Wisconsin county has zoning ordinance provisions that protect water resource values: water quality, recreation and navigation, fish and wildlife habitat, and natural scenic beauty. County ordinances must have standards that meet or exceed the minimum state standards contained in Chapter NR 115, Wisconsin Administrative Code. The shoreland provisions include:

- setbacks for structures from waterways
- minimum lot sizes
- controls on cutting shoreland vegetation
- standards for land disturbance activities
- protection of wetlands
- restrictions on improvements to nonconforming structures

Current development trends continue to pose major challenges to the shoreland program. As new sections of shoreline are developed, long continuous sections of natural shorelines are broken into small fragmented patches. This likely reduces the availability and quality of habitat needed by shoreline-dependent species, such as loons, eagles, osprey, and many amphibian species, particularly in northern Wisconsin. Along highly developed shorelines, preserving even small amounts of near-shore and fringe wetland habitat becomes critical for maintaining natural reproduction of fish populations. As smaller seasonal cabins are replaced with larger four season homes, concerns over the size of lots and carrying capacity of the land arise. In addition, development in areas typically considered undevelopable and second and third tier development are now problems that the shoreland program did not predict nearly 40 years ago.

Much has changed in the way we develop waterfront property and the demands we place upon our developed areas. Revision to this program would equip the county with the tools and techniques needed to protect these valuable resource areas while allowing reasonable development to continue for the foreseeable future.

IV. State Comparison:

Minnesota
The State of Minnesota has a shoreland program that is also currently in the process of being revised. The MN DNR, on their website, states that an increase in development pressure around lakes and rivers has raised concerns about water quality and impacts on lake use therefore resulting in the need to review current shoreland minimum standards in the state. Minnesota bases their shoreland program on statewide classification of all surface waters based on size and shape, amount and type of existing development, road and service accessibility, existing natural character of the water and other parameters. Waterbodies are classified as natural environment lakes, recreational development lakes, general development lakes, remote river segments and forested rivers. Each class has specific standards associated with shoreland zoning including building setbacks, lot sizes and widths, bluff impact zones, slope requirements and others. The states do differ on where the shoreline setback is measured from and how the Ordinary High Water Mark is determined. In practice this difference may result in reduced shoreline setbacks in Minnesota when compared to standards in Wisconsin. The states also have somewhat different standards in treatment of nonconforming structures.

Michigan
The State of Michigan also has a wild and scenic rivers protection program to provide special protection to designated rivers. This program is managed very similar to other wild and scenic river protection programs nationwide. The protection standards are outlined in Natural River Zoning Rule 281 which outlines standards for river setbacks, minimum lot widths, special vegetation management standards, and nonconforming structure improvements. Additional activities that may have potential impacts to the public

trust, riparian rights, or may impair or destroy the waters or other natural resources of the state, including inland lakes and streams, the Great Lakes, wetlands, and groundwater, are regulated by the DEQ.

Illinois
The State of Illinois regulates inland waters through an administrative code detailing conservation measures for public waters. The purpose of the program is to protect the public's interests, rights, safety and welfare in the State's public bodies of water. More specifically construction is regulated to prevent obstruction to, or interference with, the navigability of any public body of water; encroachment on any public body of water; and impairment of the rights, interests or uses of the public in any public body of water or in the natural resources thereof.

Indiana
The state of Indiana also regulates lake-side construction activities and provides standards for the activities along and within public freshwater lakes. The state also has standards for nonconforming uses and nuisances including the removal of a lawful nonconforming use if the structure or facility affects public safety, natural resources, natural scenic beauty or the water level of a public freshwater lake.

Iowa
The state of Iowa has an integrated watershed management program, surface water regulation program which includes motor regulations and slow-no-wake areas to reduce shore erosion and a new (January 12, 2005) invasive species program to help safeguard the biological integrity of the lakes and river systems in Iowa. However, Iowa does not have a specific program for shoreland management or shoreland zoning. Most of Iowa's environmental programs are directly mandated by the federal government and required components of EPA or FEMA programs.

V. A Summary of Factual Data:

This rule was developed based on guidelines and criteria for minimum standards outlined in the authorizing statutes sections 59.692, 227.11 (2)(a), and 281.31, Stats. The final revision package was the result of scientific analysis, literature summaries, advisory committee meetings, listening sessions, extensive public comments and formal public hearings that spanned a nearly a five year period The revision is a result of a collaborative effort between several key stakeholders including local elected officials, implementing agencies, private sector business interests, academic experts and conservation associations. This was a comprehensive effort that began by collecting data, analyzing issues, developing goals and objectives, summarizing comments and data and ultimately reviewing every section of the numerous rule drafts as well as 5 individual workgroups and three issue specific focus groups.

The planning process identified some key problem areas concerning application of the existing zoning standards and regulation consistency. Confusion and misunderstandings have resulted from unclear, subjective language, and inconsistent application of zoning standards. Landowners and local governments have been frustrated in applying and interpreting the intent of the shoreland regulations. The proposed ch. NR 115 has been developed to clarify the standards and provide more flexibility in the application of land use standards and restrictions that will allow reasonable improvement of private properties, while still protecting the resources and natural scenic beauty of Wisconsin's waters.

VI. Effect on Small Businesses:

Small businesses are not expected to be significantly impacted by the proposed rule changes. Lot size and setback requirements have been imposed on businesses within the shoreland zone since the inception of the program back in the late 1960s. Commercial development has never been, and is not as a condition of this proposal, singled out as a different use. New impervious surface standards and mitigation requirements will pertain to small business just like a single-family residential development. Safeguards have been put into place to guarantee the amount of mitigation that would be required on large scale projects which may prove beneficial for some small businesses. Standards contained in this rule may limit some facility expansion based on location; however, other modifications in the rule will help in allowing current facilities to maintain and update current structures without limitations now imposed on

the cost of those modifications. The rule requires local units of government to adopt zoning based on these rules. The local units of government will enforce the local ordinances.

VII. Anticipated Costs Incurred by the Private Sector:

Submission of an application for a permit under the local ordinances will result in costs to the applicant to provide the needed background information. The application costs will vary by individual permit application depending on the type of project undertaken and the level of detailed information needed to provide local zoning authorities sufficient background information to make a determination. This rule will require mitigation. Mitigation costs will be incurred for vegetative plantings, runoff control and other types of practices that may be needed and determined by the local zoning office.

Agency contact person: Toni Herkert (608) 266-0161 toni.herkert@dnr.state.wi.us

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SECTION 1. Chapter NR 115 (title) is amended to read:

WISCONSIN'S SHORELAND ~~MANAGEMENT~~ PROTECTION PROGRAM

SECTION 2. NR 115.01 (1) is amended to read:

NR 115.01 (1) Section 59.692, Stats., requires a county to adopt zoning ~~and subdivision regulations~~ ordinances for the protection of all shorelands in unincorporated areas ~~by January 1, 1968~~, and provides that if the department of natural resources determines, after notice and hearing, that a county has not adopted a shoreland zoning ordinance ~~by January 1, 1968~~, or that a county has adopted an ordinance which fails to meet ~~reasonable minimum~~ the shoreland zoning standards in ~~accomplishing the shoreland protection objectives found in s. 281.31, Stats.~~ this chapter, the department ~~is to~~ shall adopt a shoreland zoning ordinance to be administered by that county.

SECTION 3. NR 115.01 (2) is amended to read:

NR 115.01 (2) Section 281.31 (1), Stats., provides that the purpose of shoreland zoning regulations shall: "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty." A county shall adopt shoreland zoning standards that are consistent with this purpose and which limit the direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland and upland wildlife habitat and natural scenic beauty by all of the following:

(a) Controlling the density and location of development to allow adequate room between structures and navigable waters for primary shoreland buffers, secondary shoreland buffers, and for the infiltration of stormwater runoff.

(b) Preserving and establishing shoreland vegetation in order to infiltrate stormwater runoff to screen shoreland development and to preserve natural beauty.

(c) Ensuring that the construction, reconstruction, structural alteration, expansion or replacement of a structure in the shoreland zone is designed to limit environmental impacts and prevent water pollution.

(d) Minimizing vegetation removal, soil erosion, soil compaction and sedimentation.

SECTION 4. NR 115.01 (4) is created to read:

NR 115.01 (4) In order to meet the shoreland protection objectives found in s. 281.31 (1) and (6), Stats., and to adequately protect local resources, a county may adopt more protective shoreland zoning regulations than are required by the minimum standards in this chapter.

SECTION 5. NR 115.02 is repealed and recreated to read:

NR 115.02 Applicability. (1) The provisions of this chapter are applicable to county regulation of the use and development of unincorporated shoreland areas, and to county, city or village regulation of previously unincorporated shoreland areas that were annexed by a city or village after May 7, 1982 or incorporated as a city or village after April 30, 1994. References in this chapter to a county, or county government agencies, shall be read to apply to cities and villages, or city and village agencies, when this chapter is applied to annexed or incorporated areas in situations where s. 59.692 (7), Stats., requires that shoreland zoning is to continue in effect.

(2) Town zoning ordinances that are more restrictive than the shoreland zoning ordinance of the county in which the town is located may be enforced in the shoreland zone, in addition to county shoreland zoning, to the extent of the greater restrictions, but any provisions that conflict with, or are less restrictive than, the county shoreland zoning ordinance are unenforceable in the shoreland area.

(3) Unless specifically exempted by law, all cities, villages, towns and counties are required to comply with, and obtain all necessary permits under, local shoreland zoning ordinances.

(4) State agencies are required to comply with, and obtain all necessary permits under, local shoreland zoning ordinances if required by s. 13.48 (13), Stats.

(5) The construction, reconstruction, maintenance and repair of state highways, bridges, and other transportation projects carried out under the direction and supervision of the Wisconsin department of transportation are not subject to local shoreland zoning ordinances~~,~~ if s. 30.2022, Stats., applies.

(6) A Lower St. Croix riverway zoning ordinance that is adopted by a county, city or village in compliance with the requirements of s. 30.27, Stats., and ch. NR 118 may be adopted and administered as the county's shoreland zoning ordinance for shorelands within the Lower St. Croix national scenic riverway. All areas outside of the Riverway boundary that are within the shoreland zone shall be regulated by the county shoreland zoning ordinance which meets or exceeds the standards in this chapter.

SECTION 6. NR 115.03 is repealed and recreated to read:

NR 115.03 Definitions. For the purpose of this chapter:

(1) "Access and viewing corridor" means a vegetated strip of land that extends through the primary shoreland buffer to provide pedestrian access to the waterfront.

(2) "Accessory structure" means a subordinate structure, the use of which is incidental to, and customarily found in connection with, the principal structure or use of the property.

Note: Examples of accessory structures include detached garages, sheds, barns, gazebos, patios, decks, swimming pools, hot tubs, fences, retaining walls, driveways, parking lots, sidewalks and detached stairways and mechanical lifts.

(3) "Agricultural practice" has the meaning found in s. 281.16 (1)(b), Stats.

Note: Section 281.16 (1)(b), Stats., defines "agricultural practice" to mean "beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; grazing; livestock raising; orchards; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming; placing land in federal programs in return for payments in kind; owning land, at least 35 acres of which is enrolled in the conservation reserve program under 16 USC 3831 to 3836; and vegetable raising."

(4) "Best management practices" or "BMPs" means structural or non-structural measures, practices, techniques or devices employed to avoid or minimize soil, sediment or pollutants being carried in runoff to navigable waters.

(5) "Compliant building location" means a location on a lot where a structure may legally be placed in accordance with the requirements of the county's shoreland zoning ordinance and which provides at least a 30 foot deep location for the structure.

(6) "Conditional use" or "special exception" means a use that is specifically listed in a shoreland zoning ordinance as either a conditional use or special exception and that may only be permitted if the appropriate governmental body, as authorized by county, city or village ordinance, determines that the conditions specified in the shoreland zoning ordinance for that use are satisfied.

(7) "County zoning agency" means the agency or office that is created or designated by the county board under s. 59.69 (2)(a), Stats., to act in matters pertaining to county planning and zoning.

(8) "Dam" means any artificial barrier in or across a watercourse that has the primary purpose of impounding or diverting water. A dam includes all appurtenant works, such as a dike, canal or powerhouse.

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

(10) "Disabled" means having a physical or mental impairment that substantially limits one or more major life activities.

(11) "Expansion" means an addition to an existing structure that makes the structure larger, taller or both.

(12) "Floodplain" means the land that has been or may be hereafter covered by flood water during the regional flood, as defined in s. NR 116.03 (41).

(13) "Forest land" means any property on which trees exist, standing or fallen, alive or dead, that are primarily grown because they are valuable for forest products, watershed or wildlife protection or non-residential recreational uses. Forest land does not include property where shade or ornamental trees are grown primarily because they are valuable for landscape, aesthetic, agricultural or similar purposes.

Note: A parcel of land need not be designated as managed forest land under ss. 77.80 to 77.91, Stats., or be enrolled in any other forest management program to be considered "forest land."

(14) "Forest management activities" means actions taken to establish, maintain or enhance forest land including planting trees, thinning and trimming trees, and harvesting timber and other forest products.

(15) "Impervious surface" means an area that releases as runoff all or a large portion of the precipitation that falls on it, except for frozen soil. Rooftops, sidewalks, driveways, parking lots and streets are examples of surfaces that typically are impervious unless specifically designed, constructed and maintained to be pervious.

(16) "Land disturbing construction activity" means any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover, that may result in runoff and lead to an increase in soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes clearing and grubbing, demolition, excavating, pit trench dewatering, filling and grading activities.

(17) "Levee" means a continuous dike or embankment of earth constructed to prevent the flooding of certain areas of land.

(18) "Lift" means a mechanical device, either temporary or permanent, containing a mobile open-top car, including hand rails or guard rails, a track upon which the open-top car moves, and a mechanical device, which may or may not be motorized, to provide power to the open-top car.

(19) "Lot" means a contiguous parcel of land with described boundaries that abuts, or has access via an easement or areas of common ownership to, a public or private street or road.

Note: For the purpose of calculating lot area, the area or width of a lot may not include any portion of the bed of a navigable body of water below the ordinary high water mark, as provided in s. NR 115.11.

(20) "Mitigation" means implementing measures to restore natural functions to balance values lost through development and human actions.

(21) "Natural areas management activities" means actions taken to establish, maintain or enhance native plant communities or fish or wildlife habitat including forest management activities, prairie restoration, wetland restoration and removal of exotic species.

(22) "Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within this state and all streams, ponds, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of the boundary waters, which are navigable under the laws of this state.

Note: Wisconsin case law further defines this term as any body of water, with a defined bed and bank, which is navigable under the laws of the state. In Wisconsin, a navigable body of water is capable of floating the lightest boat or skiff used for recreation or any other purpose on a regularly recurring basis.

Section 281.31 (2m), Stats., also provides that, notwithstanding any other provision of law or administrative rule, a shoreland zoning ordinance required under s. 59.692, Stats., "does not apply to lands adjacent to farm drainage ditches if:

(a) Such lands are not adjacent to a natural navigable stream or river;

(b) Those parts of the drainage ditches adjacent to these lands were nonnavigable streams before ditching; and

(c) Such lands are maintained in nonstructural agricultural use."

(23) "Ordinary high water mark" means the point on the bank or shore up to which the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognized characteristic.

(24) "Primary shoreland buffer" means a vegetated buffer strip, measured on a horizontal plane, parallel to the ordinary high water mark, and extending inland from the ordinary high water mark a minimum of 35 feet.

(25) "Principal structure" means the main building or other structure on a lot or parcel of land that is utilized for the property's primary use, including attached garages and porches.

(26) "Reasonable accommodation" means allowing a disabled person to deviate from the strict requirements of the county's zoning ordinances if an accommodation is necessary and reasonable, in order not to unlawfully discriminate against the disabled person and to allow them equal housing opportunity.

Note: Federal courts have interpreted the "reasonable accommodations" requirement in the Federal Fair Housing Act to mean that an accommodation is reasonable "if it does not cause any undue hardship or fiscal or administrative burdens on the municipality, or does not undermine the basic purpose that the zoning ordinance seeks to achieve." *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1186 (E.D.N.Y. 1993)

(27) "Secondary shoreland buffer" means a vegetated buffer strip, measured on a horizontal plane, from the inland edge of the primary shoreland buffer to the county designated setback.

(28) "Shoreland setback area" has the meaning found in s. 59.692 (1)(bn), Stats.

Note: Section 59.692 (1)(bn), Stats., defines "shoreland setback area" to mean "an area in a shoreland that is within a certain distance of the ordinary high water mark in which the construction or placement of buildings or structures has been limited or prohibited under an ordinance enacted under this section."

(29) "Shorelands" and "shoreland zone" have the meaning found in s. 59.692 (1)(b), Stats.

Note: Section 59.692 (1)(b), Stats., defines "shorelands" to mean "the area within the following distances from the ordinary high water mark of navigable waters, as defined under s. 281.31 (2)(d):

1. One thousand feet from a lake, pond or flowage. If the navigable water is a glacial pothole lake, this distance shall be measured from the high water mark of the lake.

2. Three hundred feet from a river or stream or to the landward side of the floodplain, whichever distance is greater."

(30) "Shoreland-wetland zoning district" means a zoning district, created in compliance with the requirements of s. NR 115.07.

(31) "Structure" means any man-made object with form, shape and utility, either permanently or temporarily placed upon the ground. The term "structure" does not include objects that are easily moved by hand.

Note: Examples of structures include houses, garages, storage sheds, boathouses, camping trailers, mobile homes, swimming pools, hot tubs, fences, patios, decks and retaining walls.

(32) "Variance" means an authorization granted by the appropriate governmental body to construct, place, alter or expand a structure, or use a lot, in manner that deviates from the dimensional requirements of a shoreland zoning ordinance.

(33) "Wetland" has the meaning found in s. 23.32 (1), Stats.

Note: Section 23.32 (1), Stats., defines "wetland" to mean "an area where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions."

SECTION 7. NR 115.05 (title) is amended to read:

NR 115.05 (title) Shoreland ~~regulation standards and criteria~~ zoning districts.

SECTION 8. NR 115.05 (1) is amended to read:

NR 115.05 ~~(1)~~ ESTABLISHMENT OF APPROPRIATE ZONING DISTRICTS. Counties shall adopt shoreland zoning ordinances that ~~include~~ establish, at a minimum, ~~zoning regulations for~~ a shoreland-wetland zoning ~~districts~~ district that is regulated in compliance with the requirements in s. NR 115.07. A county may create other types of land use districts in shorelands, ~~(~~such as general purpose, agricultural, industrial, commercial, residential, recreational, or conservancy~~, or wetlands~~ districts~~)~~ ~~may be created in addition to shoreland-wetland zoning districts.~~ The districts shall be established in, or incorporated by reference into, the county's shoreland zoning ordinance adopted under s. 59.692, Stats.

SECTION 9. NR 115.05 (note) is created to read:

Note: Section 56.692 (5), Stats., provides that an ordinance enacted under s. 59.692, Stats., supersedes all provisions of an ordinance enacted under s. 59.69, Stats., that relate to shorelands.

SECTION 10. NR 115.05 (2) is renumbered NR 115.07.

SECTION 11. NR 115.05 (3) to (6) are repealed.

SECTION 12. NR 115.06 is repealed.

SECTION 13. NR 115.07 (title), (1) (a), (2) (a) and (c), (3) (intro.), (c) (note), (e), (g), (j), and (k), (4), and (5) (a) to (c), (d) (intro.), (e), (f), (g) (intro.), (h) and (i), as renumbered, are amended to read:

NR 115.07 ~~Establishment and regulation of shoreland-wetland~~ Shoreland-wetland zoning ~~districts.~~ (1) COUNTY REVIEW OF PRELIMINARY WETLAND INVENTORY MAPS. Before the department prepares or amends final Wisconsin wetland inventory maps~~:~~,

~~(a) T~~the department shall transmit to the county zoning agency ~~designated under s. 59.69 (2)(a), Stats.,~~ digital or paper copies of preliminary wetland inventory maps for that county.

~~(b) The county zoning agency shall have 90 days to review the preliminary maps unless the review period is extended by written approval of the department, but in no case shall the review period extend for more than 180 days.~~

~~(c) The county zoning agency shall hold a public hearing to solicit public comments on the preliminary wetland inventory maps. Notice of the time and place of the hearing shall be mailed to the town clerk of each town in the county and shall be published as a class 1 notice, under ch. 985, Stats.~~

~~(d) On or before the last day of the review period, the county zoning agency shall return the preliminary maps to the department. If the county zoning agency believes that the preliminary maps are inaccurate, discrepancies shall be noted on the maps with an accompanying narrative explaining the problem areas.~~

~~(e) The department shall schedule a meeting with the county zoning agency within 30 days of the return of the preliminary maps if the county zoning agency has indicated that they believe that there are inaccuracies on the maps.~~

~~(f) After meeting with the county zoning agency to discuss apparent map inaccuracies, the department shall, at department expense, consult available soil survey maps and conduct on-site inspections, if appropriate, in order to evaluate the county recommendations, and shall then prepare the final Wisconsin wetland inventory maps for that county.~~

~~(g) The adoption of a final Wisconsin wetland inventory map is a final decision of the department and may be reviewed as provided in ch. 227, Stats.~~

(2) COUNTY ADOPTION OF SHORELAND-WETLAND ZONING. (a) Each county shall, within 6 months after receipt from the department of final Wisconsin wetland inventory maps, or Wisconsin wetland inventory map amendments, for that county ~~from the department~~, zone all shorelands within the county

that are designated as wetlands on the Wisconsin wetland inventory maps, ~~in~~ as a shoreland-wetland zoning district.

(c) The appropriate ~~district~~ regional office of the department shall be provided with a copy of the proposed text and map amendments and with written notice of the public hearing at least 10 days prior to the hearing.

(3) PERMITTED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Within shoreland-wetland zoning districts, a county ~~shall~~ may permit the following uses, which shall also comply with ~~subject to~~ the general requirements of ~~sub. (3)~~ ss. NR 115.05 to 115.27, the provisions of chs. 30 and 31, Stats., and other state and federal laws, if applicable:

(c) Note: Local units of government, in the development and application of ordinances which apply to shoreland areas, must consider other programs of statewide interest and other state regulations affecting the lands to be regulated, i.e. regulations and management practices applicable to state and county forests and lands entered under the forest cropland program in subch. I of ch. 77, Stats., and ~~woodland tax law programs~~ the managed forest land program in subch. VI of ch. 77, Stats.

(e) The cultivation of agricultural crops if cultivation can be accomplished without filling, flooding or artificial drainage of the wetland through ditching, tiling, dredging or excavating except that flooding, dike and dam construction, and ditching shall be allowed for the purpose of growing and harvesting cranberries. The maintenance and repair of existing drainage systems, ~~(~~such as ditching and tiling~~)~~, shall be ~~permitted~~ allowed. The construction and maintenance of roads shall be ~~permitted~~ allowed if the roads are necessary for agricultural cultivation, cannot as a practical matter be located outside the wetland, and are designed and constructed to minimize the adverse impact upon the natural functions of the wetland.

(g) The construction and maintenance of nonresidential ~~buildings~~ structures, not to exceed 500 square feet, used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals, or used solely for some other purpose which is compatible with wetland preservation if the building cannot as a practical matter be located outside the wetland, ~~not to exceed 500 square feet,~~ provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

(i) Note: This section includes wetland conservation activities meeting the standards of ch. NR 353.

(j) The construction and maintenance of electric, gas, telephone, water and sewer transmission and distribution lines, and related facilities, ~~by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members,~~ which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for such construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

Note: Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

(k) The construction and maintenance of railroad lines which cannot as a practical matter be located outside the wetland, provided that any filling, excavating, ditching or draining necessary for ~~such~~ the construction or maintenance is done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland.

(4) PROHIBITED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Any use not permitted in ~~par. (c)~~ sub. (3) is prohibited in a shoreland-wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance in accordance with s. 59.69 (5)(e), Stats., and the procedures outlined in ~~par. (e)~~ sub. (5).

(5) REZONING OF SHORELAND-WETLAND ZONING DISTRICTS. (a) ~~Official o~~Ordinance amendments are required for any change in shoreland-wetland zoning districts~~. Such~~ . The amendments shall be made upon petition in accordance with provisions of s. 59.69 (5)(e), Stats.

(b) The county clerk shall submit a copy of every petition for an amendment to a shoreland-wetland zoning district to the appropriate ~~district~~ regional office of the department within 5 days of the filing of ~~such~~ the petition with the clerk.

(c) All proposed text and map amendments to shoreland-wetland zoning districts shall be referred to the county zoning agency for a public notice and hearing as required by s. 59.69 (5)(e) 2., Stats. The county shall provide written notice of the public hearing at least 10 days prior to ~~such~~ the hearing to the appropriate ~~district~~ regional office of the department.

(d) In order to ensure that the shoreland protection objectives found in s. 281.31, Stats., will be accomplished by the county shoreland zoning ordinance, a county ~~shall~~ may not rezone a shoreland-wetland zoning district, or portion thereof, if there is a practicable alternative or if the proposed rezoning may result in a significant adverse impact upon any of the following:

(e) If the department determines that the proposed rezoning may have a significant adverse impact upon any of the criteria listed in ~~subd. 4~~ par. (d), the department shall notify the county zoning agency of its determination either prior to or during the public hearing held on the proposed amendment.

(f) As soon as possible after holding a public hearing, the county zoning agency shall submit its written findings and recommendations to the county board. ~~Said~~ The findings shall outline the reason for the agency's recommendations. After receipt of the county zoning agency's findings and recommendations, the board may approve or disapprove of the proposed amendment.

(g) The county shall send to the appropriate ~~district~~ regional office of the department ~~shall be provided with~~:

(h) If the county board approves of the proposed amendment and the department determines, after review as required by s. NR ~~115.06~~ 115.25 (2)(c), that the county shoreland zoning ordinance if so amended would no longer comply with the requirements of s. 59.692, Stats., and this chapter, the department shall, after notice and hearing, adopt a complying ordinance for the county, under s. 59.692 (6), Stats.

(i) If the department has notified the county zoning agency that a proposed amendment may have a significant adverse impact upon any of the criteria listed in ~~subd. 4~~ par. (d), ~~that~~ the proposed amendment, if approved by the county board, ~~shall~~ does not become effective until more than 30 days have elapsed since written notice of the county board's approval was mailed to the department, as required by ~~subd. 7~~ par. (g). If within the 30-day period the department notifies the county board that the department intends to adopt a superseding shoreland zoning ordinance for the county under s. 59.592 (6), Stats., the proposed amendment ~~shall~~ may not become effective while the ordinance adoption procedure is proceeding, but shall have its effect stayed until the s. 59.692 (6), Stats., procedure is completed or otherwise terminated.

SECTION 14. NR 115.09 is created to read:

NR 115.09 Land division review. (1) GENERAL. All divisions of land in the shoreland zone that establish one or more lots that are 5 acres in size or smaller shall be reviewed and approved by the county and shall comply with the applicable minimum lot size standards in s. NR 115.11. In the review the following factors shall be considered:

(a) County comprehensive planning.
(b) Hazards to the health, safety or welfare of future residents.
(c) Proper relationship to adjoining areas.
(d) Public access to navigable waters, as required by law.
(e) Appropriate stormwater drainage or retention facilities.
(f) Conformity to state law and administrative code provisions.

(2) NAVIGABLE BODIES OF WATER WITHIN LOTS. For land divisions in the shoreland zone which are created after the effective date of the county's ordinance implementing the version of this chapter effective on the effective date of this rule [Revisor insert date], a county may not approve creation of a lot that is divided by a navigable stream unless a portion of the lot on at least one side of the stream has a compliant building location.

SECTION 15. NR 115.11 is created to read:

NR 115.11 Minimum lot sizes. (1) GENERAL. (a) *Minimum lot size.* Except as provided in subs. (2) to (5), a county may not permit the construction or placement of a structure on a lot in the shoreland zone which is created after the effective date of the county's ordinance implementing the version of this

chapter effective on the effective date of this rule [Revisor insert date], unless the lot has a minimum area of 20,000 square feet and a minimum width of 100 feet at the ordinary high water mark and at the building setback line.

(b) *Beds of navigable waters excluded.* In calculating the minimum area or width of a lot, the beds of navigable waters may not be included.

(2) MULTI-FAMILY RESIDENTIAL STRUCTURES, MOBILE HOME PARKS AND CAMPGROUNDS. Counties shall develop minimum area or lot size requirements for multi-family residential structures, mobile home parks and campgrounds as part of the county's shoreland zoning ordinance. The ordinance shall require compliance with the rest of the county's shoreland zoning ordinance except the county may allow smaller lot sizes than those allowed under sub. (1)(a).

(3) SUBSTANDARD LOTS. A county may not permit the construction or placement of a structure on a lot in the shoreland zone that does not comply with the standards in this section, unless the lot is a lot of record that complied with applicable lot size requirements in effect at the time that the lot was recorded at the county register of deeds office, and the proposed construction or placement of a structure will comply with all other standards in the county's ordinance.

(4) PLANNED RESIDENTIAL DEVELOPMENTS. A lot may be created which does not meet the requirements of sub. (1) if the county has approved and recorded a plat or certified survey map for a planned unit, cluster or conservation development that allows reduced lot sizes in exchange for larger shoreland buffers, larger lot sizes or larger setbacks on those lots adjacent to the water.

SECTION 16. NR 115.13 is created to read:

NR 115.13 Minimum setbacks. (1) GENERAL. Except as provided in par. (b) and subs. (2) to (5), all structures shall be setback a minimum of 75 feet from the ordinary high water mark of navigable waters.

Note: A house boat or other structure that is licensed as a boat is still regulated under the county's shoreland zoning ordinance as a "structure," as that term is defined in s. NR 115.03 (36).

(a) *Measuring setback.* The minimum setback shall be measured on a horizontal plane from the point of a structure that is nearest to the ordinary high water mark, including roof overhangs and any cantilevered portions of the structure, unless, prior to the effective date of this rule [revisor insert date], a county has measured minimum setbacks to the nearest point of the foundation or base of a structure instead of measuring to roof overhangs. A county may continue to measure the minimum setback on a horizontal plane from the foundation or base of a structure at the point that is nearest to the ordinary high water mark, provided that after the effective date of this rule [revisor insert date], the county's shoreland zoning ordinance also requires, for any new construction, reconstruction, expansion, structural alteration, replacement, or relocation of any structure, that any cantilevered portion of a structure other than roof overhangs to be setback at least 75 feet from the ordinary high water mark and limits roof overhang width to no more than 3 feet.

Note: Porches are considered part of the structure. The width of porch roofs is not limited to 3 feet under s. NR 115.13 (1)(b), regardless of how a county measures the minimum setback.

(b) Location of ordinary high water mark. For the purposes of this chapter, if the department and the county determine different ordinary high water marks for a lot, the following procedure may be adopted in the county's shoreland zoning ordinance to resolve the inconsistency:

1. If the difference between the department and the county determination of the ordinary high water mark is one foot or less measured on a horizontal plane, the county determination may be used.

2. If the difference between the department and the county determination of the ordinary high water mark is greater than one foot measured on a horizontal plane, the department's determination shall be used unless a wetland 40 feet or more in depth is present and the county, as part of their county shoreland zoning ordinance, adopts the provision in subd. 3. or a more stringent requirement.

3. If a wetland of 40 or more feet between open water and the wetland-upland boundary is identified, the county may establish a minimum setback of 35 feet landward from the wetland-upland

boundary. If necessary for safety, the primary buffer may be reduced to allow 15 feet of secondary buffer around the principal structure.

(2) EXEMPTED STRUCTURES. The following structures are exempt from the minimum setback standards in sub. (1).

(a) *Boathouses.* Dry boathouses located above the ordinary high water mark may be allowed within the minimum setback provided they are no larger than 250 square feet in size, are not used for human habitation and do not contain plumbing.

(b) *Open sided and screened structures.* Structures such as gazebos, decks, patios and screen houses in the shoreland setback area, that satisfy the requirements in s. 59.692 (1v), Stats., are exempt from the shoreland setback standards in sub. (1).

(c) *Fishing rafts.* Fishing rafts that are authorized on the Wolf river and Mississippi river under s. 30.126, Stats., and that are pulled up onto the shore in the fall for winter storage but are moved onto the water in the spring are exempt from the minimum setback standards in sub. (1).

(d) *Satellite dishes and antennas.* Broadcast signal receivers including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter are exempt from the minimum setback standards in sub. (1).

Note: Under 47 CFR 1.4000 and 25.104, state and local regulations that would impair the installation, maintenance or use of certain satellite dishes or antennas are prohibited.

(e) *Utilities.* Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. Comm 83, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure are exempt from the minimum setback standards in sub. (1).

Note: Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

(f) *Flagpoles.* Flagpoles are exempt from the minimum setback standards in sub. (1).

(3) STRUCTURES COUNTIES MAY EXEMPT. Counties may exempt from the minimum setback standards in sub. (1), any structures that are regulated and permitted under ch. 30 or 31, Stats., such as piers, rip-rap, biological shore control structures, fish cribs, boat shelters, boat ramps, and dams and bridges and their appurtenant structures that have required state and federal permits, or meet statutory or administrative rule standards that do not require a state or federal permit.

(4) PERMITTED STRUCTURES. Counties may permit structures within the minimum setback if they are designed, constructed and maintained to minimize runoff to and preserve shore cover on navigable waters and have as their fundamental purpose one or more of the following goals:

(1) To provide safe, pedestrian access to navigable waters, including public walkways or trails.
(2) To provide public health and safety information.
(3) To control significant, on-going erosion or slope stabilization.
(4) To maintain or improve fish and wildlife habitat.
(5) To maintain or improve water quality.

Note: Structures may include water quality improvement projects which comply with agricultural runoff management performance standards in ss. NR 151.01 to 151.095, wildlife and fisheries habitat improvement structures designated as necessary components of approved management plans and erosion control structures necessary to address significant on-going erosion.

(5) SETBACK REDUCTION PROCESS. A county may permit a reduced minimum setback for a new principal residential structure if all of the following conditions are satisfied:

1. The lot does not have a compliant building location which meets the applicable county setback, a minimum of 75 feet from the ordinary high water mark, due to unique property features.

Note: The department recommends that counties define unique property features to the area in their county shoreland zoning ordinance.

2. The depth of the structure is limited to 30 feet.

3. The lot is a legal lot of record that complied with the applicable lot size standards in effect at the time that the lot was recorded at the county register of deeds office.

4. The minimum setback shall be minimally reduced to create a compliant building location and may not be less than 50 feet from the ordinary high water mark.

5. Soil disturbance and vegetation removal activities do not encroach into the primary shoreland buffer.

6. The impervious surface standards in s. NR 115.19(3) are met.

7. The mitigation requirements in s. NR 115.21 are implemented and maintained.

SECTION 17. NR 115.15 is created to read:

NR 115.15 Height requirements. To protect and preserve the wildlife habitat and natural scenic beauty of lake and riverine environments, after the effective date of this rule [revisor insert date], a county may not permit the construction or placement of a structure on a lot within 300 feet of the ordinary high-water mark of a lake or stream unless the structure height does not exceed 35 feet. A county may create specific standards for height that apply to zoning districts for commercial, agricultural or industrial development within the shoreland zone provide those standards are incorporated into the county's shoreland zoning ordinance.

SECTION 18. NR 115.17 is created to read:

NR 115.17 Shoreland vegetation and buffers. (1) GENERAL. (a) *Vegetation removal criteria.* Any vegetation removal in the shoreland zone shall be governed by sound forestry and soil conservation practices, consideration of the effects on water quality and shall be designed and implemented in a manner to minimize erosion, sedimentation and impairment of near-shore aquatic, wetland, and upland wildlife habitat, and natural scenic beauty.

(b) *Vegetation management.* A county shall adopt standards for vegetation management, including the pruning of vegetation, if necessary, in the primary and secondary shoreland buffer and in the access corridor that will minimize erosion and destruction of natural scenic beauty and will provide visual screening from the water of dwellings, parking areas and other structures.

(2) PRIMARY SHORELAND BUFFERS. Except as provided in subs. (4) to (10), property owners shall preserve or establish, and maintain, a primary shoreland buffer of native shoreland vegetation in the area that extends a minimum of 35 feet inland from the ordinary high water mark of navigable waters under the following circumstances:

(a) When a new principal structure is being constructed;

(b) When primary buffer restoration or maintenance is selected to meet the requirements of s. NR115. 21 for any reconstruction, expansion, structural alteration, replacement, or relocation of any proposed structure that does not meet the minimum setback standards in s. NR 115.13 or the impervious surface standards in s. NR 115.19;

(c) When required by a county's ordinance.

Note: Section 23.24 (3)(a), Stats., provides that no person may introduce a nonnative aquatic plant into the waters of the state without an aquatic plant management permit issued by the department. Property owners should avoid planting nonnative plant species in the shoreland buffer area that may spread to nearby wetlands or waterways, such as reed canary grass.

Note: The Wisconsin Natural Resources Conservation Service Standard for Shoreland Habitat, Code 643A, and its companion Wisconsin Biology Technical Note 1: Shoreland Habitat, provide specific criteria for the establishment of native vegetation for the improvement of fish and wildlife habitat, water quality and bank stability.

(c) *Access and viewing corridor.* Access and viewing corridors may extend through the primary shoreland buffer to the waterfront and shall be maintained in ground layer vegetation in order to provide pedestrian access to the waterfront, provided that the total width of the corridors on a lot does not exceed the following amounts:

1. When a new principal structure is being constructed, or when required under s. NR 115.21, lots 200 feet or less wide at the ordinary high water mark may have a total width of an access and viewing corridor or corridors that may not exceed 40 feet or 30% of the lot's width at the ordinary high water mark, whichever is less.

2. When a new principal structure is being constructed, or when required under s. NR 115.21, lots which are more than 200 feet wide at the ordinary high water mark are allowed a total width of an access and viewing corridor or corridors that may not exceed 200 feet or 20% of the lot's width at the ordinary high water mark, whichever is less.

(d) *Removal.* Vegetation may not be removed from the primary shoreland buffer except in access and viewing corridors. The removal of exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation posing an imminent safety hazard is allowed. Any vegetation removed under this paragraph shall be replaced by planting comparable species of native vegetation in the same area.

(3) SECONDARY SHORELAND BUFFER. Except as provided in subs. (4) to (10), property owners shall preserve or establish, and maintain, a secondary shoreland buffer of native or nonnative, non invasive, ground layer vegetation, including trees and shrubs, under the following circumstances:

(a) when a new principal structure is being constructed;

(b) when secondary buffer restoration or maintenance is selected to meet the requirements of NR115. 21 for any reconstruction, expansion, structural alteration, replacement, or relocation of any proposed structure that does not meet the minimum setback standards in s. NR 115.13 or the impervious surface standards in s. NR 115.19;

(c) when required by a county's ordinance.

(4) AGRICULTURAL PRACTICES AND FARM DRAINAGE DITCHES. (a) Land used for non-structural agricultural practices is exempt from the shoreland buffer requirements in subs. (2) and (3).

Note: The department plans to develop standards for agricultural buffers in the shorelands of navigable bodies of water as part of the process to revise ch. NR 151.

(5) FOREST MANAGEMENT ACTIVITIES. Forest management activities are exempt from the shoreland buffer requirements in subs. (2) and (3) if the property owner, or an agent or contractor of the owner, implements the voluntary forestry best management practices found in "Wisconsin's Forestry Best Management Practices for Water Quality", PUB FR-093 2003, published by the department in March 1995 and reprinted in May 2003.

Note: Copies of "Wisconsin's Forestry Best Management Practices for Water Quality", PUB FR-093 2003, are available for inspection at the offices of the Department of Natural Resources and the Revisor of Statutes. Copies may be obtained from the Wisconsin Department of Natural Resources, Division of Forestry, 101 S. Webster Street, P.O. Box 7921, Madison, WI 53707-7921. Property owners may seek advice on implementation of Forestry "BMPs" from county foresters and foresters employed by the department.

(6) NATURAL AREAS MANAGEMENT ACTIVITIES. Natural areas management activities are exempt from the shoreland buffer requirements in subs. (2) and (3) if carried out consistent with a department-approved management plan, or with a management plan that is approved by the county. Management plans shall promote the purposes in s. NR 115.01 (2) and shall be filed with the county.

(7) DAM AND LEVEE MAINTENANCE ACTIVITIES. Dam and levee maintenance activities are exempt from the shoreland buffer requirements in subs. (2) and (3) if carried out consistent with the requirements of s. 31.18, Stats. Earthen dam and levee embankments shall be maintained with ground layer vegetation, such as turf grass.

(8) UTILITY MAINTENANCE ACTIVITIES. Utility maintenance activities are exempt from the shoreland buffer requirements in subs. (2) and (3) if carried out consistent with the safe operation of public utilities and if ground layer vegetation is preserved and maintained, or established and maintained.

Note: Major electrical generating facilities and high-voltage transmission lines that have obtained a certificate of public convenience and necessity under s. 196.491, Stats., are not subject to the requirements of local ordinances.

(9) ROAD INTERSECTION AND DRIVEWAY MAINTENANCE ACTIVITIES. Roadway intersection and driveway line-of-sight maintenance activities are exempt from the shoreland buffer requirements in subs. (2) and (3) if necessary to maintain required lines-of-sight, provided that ground layer vegetation is preserved and maintained, or established and maintained, and if the activities are carried out consistent with ss. 66.1037 and 82.03 (5)(b), Stats.

(10) TEMPORARY ACCESS. If it is necessary for construction equipment to access the primary or secondary buffer areas, the viewing and access corridor shall be used for temporary access to a project site for construction equipment. If additional access is necessary due to unique property features, activities that provide temporary access to a project site for construction equipment are exempt from the shoreland buffer requirements in subs. (2) and (3) if no other feasible location is available for the equipment to access the project site and if the county approves a revegetation and erosion control plan that is developed, implemented and maintained to address erosion control issues and to restore the ground, shrub and tree layers of vegetation in the areas disturbed by the temporary access.

SECTION 19. NR 115.19 is created to read:

NR 115.19 Impervious surface standard for new and existing construction (1) GENERAL. Whenever the construction of impervious surfaces in the shoreland zone is proposed, a county shall require property owners to address the impact of those surfaces with the use of best management practices to promote infiltration, control erosion and sedimentation into and preserve shore cover on navigable waters of the state. The county's shoreland zoning ordinance shall require compliance with this section.

Note: The department maintains a list of technical standards that it has determined adequate and effective for designing best management practices to achieve the objectives of NR115.19 (1). Contact the department storm water program in the Bureau of Watershed Management to obtain a copy of this list.

(2) IMPERVIOUS SURFACE STANDARD. The construction, reconstruction, expansion, structural alteration, replacement, or relocation of a structure shall comply with the appropriate standards in subs. (3) to (6).

(3) LOTS WITH NEW PRINCIPAL STRUCTURES. On a lot where a new principal structure is proposed the requirements in pars. (a) and (b) shall be met:

(a)1.The total area of impervious surfaces, including those areas exempted or permitted under s. NR 115.13 (2) to (4), may not exceed 10% of the entire lot area within 300 feet of the ordinary high water mark; or.

2. The total area of impervious surfaces, including those areas exempted or permitted under s. NR 115.13 (2) to (4), may not exceed 20% of the lot area within 300 feet of the ordinary high water mark if the requirements in s. NR 115.21 are met.

(b) Shared impervious surfaces, shall be divided proportionately among the properties within 300 feet of the ordinary high water mark which utilize the impervious surface.

(4) LOTS WITH EXISTING PRINCIPAL STRUCTURES. (a) On a lot with an existing principal structure, unlimited maintenance and repair of the structure is allowed. In a facility licensed under chs. HFS 178 or Comm 95, replacement of a mobile home or travel trailer on the same land surface area on an existing site pad is considered maintenance and repair.

(b) On a lot with an existing principal structure, the requirements in this paragraph shall be met:

1.The total area of impervious surfaces, including those areas exempted or permitted under s. NR 115.13 (2) to (4), may not exceed 15% of the lot area within 300 feet of the ordinary high water mark; or

2. If the requirements in section s. NR 115.21 are met, the total area of impervious surfaces, including those areas exempted or permitted under s. NR 115.13(2) to (4), may not exceed 20% of the lot area within 300 feet of the ordinary high water mark.

3. On a lot with an existing principal structure, shared impervious surfaces, shall be divided proportionately among the properties within 300 feet of the ordinary high water mark which utilize the impervious surface.

(c) On a lot with an existing principal structure, impervious surface expansions within the secondary buffer may be allowed if:

1. The expansion is in a compliant location as a result of a setback reduction process;

2. The expansion does not, along with existing impervious surfaces, exceed the impervious surface percentage cap of 20%; and

3. The requirements in s. NR 115.21 are met.

(d) No structural alterations or expansions to a principal structure entirely located within the secondary buffer may extend closer to the ordinary high water mark than the existing principal structure.

(e) Reconstruction or replacement of a principal structure is allowed within the secondary buffer provided there is not a compliant building location on the lot due to unique property features, the new structure covers the same land surface area as the existing structure, and the requirements in s. NR 115.21 are met.

(f) No impervious surface expansions to structures located wholly or partially within the primary buffer may be allowed.

(g) Principal structures within the primary buffer may be reconstructed if the requirements in s. 59.692(1s), Stats. are met.

(5) ENCLOSING EXISTING IMPERVIOUS SURFACES. Building upon or enclosing existing impervious surfaces is allowed provided the enclosure will not be within the primary buffer, construction is on an existing impervious surface, documentation that demonstrates the impervious surface existed prior to the effective date of this rule [revisor insert date] is provided and the requirements in s. NR 115.21 are met.

(6) REPLACING EXISTING IMPERVIOUS SURFACES. If existing development on a lot within 300 feet of the ordinary high water mark exceeds the applicable cap on impervious surfaces in s. NR115.19 (3) or (4)on the date this rule becomes effective [revisor insert date], no increases of impervious surfaces shall be permitted. Replacement of impervious surfaces is allowed provided the surface or structure is in a compliant building location. If there is not a compliant building location due to unique property features the structure may be replaced if:

(a) The original structure was not in the primary buffer, the replacement structure covers the same land surface area as the original, and the requirements in s. NR 115.21 are satisfied, or

(b) The replacement structure is rebuilt at the most compliant location possible with the same land surface area as the original and the requirements in s. NR 115.21 are satisfied.

(7) RELOCATION OF EXISTING IMPERVIOUS SURFACES. Relocation of impervious surfaces is allowed if the following requirements are met:

(a) The surface or structure is moved to a compliant building location or, if there is not a compliant building location due to unique property features, to the greatest setback possible from the ordinary high water mark;

(b) The surface or structure is outside of the primary buffer;

(c) The requirements in s. NR 115.21 are met; and

(d) Soil permeability shall be restored to any area from which an impervious surface has been removed.

SECTION 20. NR 115.21 is created to read:

NR 115.21 Mitigation. (1) GENERAL. When construction, reconstruction, expansion, structural alteration, replacement, or relocation of a structure is proposed, mitigation shall be required if the minimum setback standards in s. NR 115.13 or the impervious surface standards in s. NR 115.19 are not met. Mitigation may be required when the vegetative management requirements in s. NR 115.17(2) are not met.

(2) PERFORMANCE STANDARD. (a)When mitigation is required, the performance standard that must be met is to protect and enhance existing water quality and habitat while achieving natural scenic beauty. To protect, preserve and enhance water quality, through the use of technical standards developed or approved by the department, counties shall require property owners to contain or infiltrate the average annual rainfall to the maximum extent practicable, with the goal that the pre-development and post-development runoff volumes remaining the same.

Note: If a stormwater management plan has been approved pursuant to ch. NR 216 and the plan meets the standards in this section, the implementation and maintenance of that plan may serve as all or a portion of the mitigation required in this section.

(b) To protect, preserve and enhance wildlife habitat, in the primary buffer one of the following must be met:

1. Natural shoreland habitat is maintained.

2. If natural habitat has been altered from natural conditions, it must be restored or enhanced and maintained to represent area plant communities or other natural features.

Note: Maintained is meant to include existing natural shorelines that already offer protection including rock outcrops, pine forests or sand dunes.

(c) To protect, preserve and enhance natural scenic beauty, shoreland vegetation or other natural features shall be maintained, or restored, through the monitoring and enforcement of the water quality, habitat and county specific visual standards that achieve the purposes of this chapter.

Note: The department may identify technical standards that exist or are specifically developed by qualified groups or organizations as adequate and effective to implement the performance standards in this subsection.

(3) PROPORTIONALITY. County ordinances shall include a mitigation system which requires mitigation that is proportional to the anticipated impacts of the project.

Note: For example, habitat mitigation may consist of a no mow area in the primary buffer or may require an entire restoration depending on the anticipated impacts of the requested project.

SECTION 21. NR 115.23 is created to read:

NR 115.23 Land disturbing construction activities. Counties shall have a permitting system for land disturbing construction activities to minimize erosion and sedimentation. Counties may exempt any land disturbing construction activity for which a permit has been granted by the department under ch. 30, Stats., or ch. NR 216 from the county zoning permit requirement, if the department-issued permit is filed with the county as specified in the county's shoreland zoning ordinance. Counties may also act as an agent of the department, utilizing a county permit to simultaneously grant state approval, if a memorandum of agreement has been developed and approved by the department and the implementing county.

Note: Land disturbing activities must also satisfy the requirements of ch. 30, Stats., chs. NR 151 and 216, and other state and federal laws, where applicable, including those erosion control measures required in the Uniform Dwelling Code (Comm 21.125), the commercial construction site erosion control standards in the Wisconsin Commerical Building Code (Comm 61.115) and the storm water and clearwater plumbing system requirements in the Uniform Plumbing Code. (Comm 82.36 and 82.365)

SECTION 22. NR 115.25 is created to read:

NR 115.25 Adoption of administrative and enforcement provisions. The shoreland ordinance adopted by each county shall provide for all of the following:

(1) The appointment of a zoning administrator, or staff person with the duties of a zoning administrator, and additional staff as the workload may require. The zoning administrator, or other zoning staff with appropriate training, may make the initial determination regarding the navigability of a body of water or the location of the ordinary high water mark for navigable waters of the county. The zoning administrator may contact the appropriate regional office of the department to request an official determination of navigability of or the location of the ordinary high water mark by department staff.

(2) The creation of a county zoning agency, as authorized by s. 59.69, Stats., a board of adjustment, as authorized by s. 59.694, Stats., and a county planning agency, as defined in s. 236.02 (1), Stats., and required by s. 59.692 (3), Stats.

(3) A system of zoning permits and fees for all new development, construction, replacement, reconstruction, expansion, structural alteration and relocation of buildings and other structures and other activities as required by this chapter. This system shall include a plan to coordinate with other county offices and town governments to ensure that landowners in unincorporated areas of the county are informed about the requirements of the county shoreland zoning ordinance when they apply for building permits and sanitary permits. All applications shall be required to include a site diagram drawn to scale that shows, at a minimum: the setback from the ordinary high water mark of all structures on the lot, any

proposed vegetative cutting or removal, and the location and size of all existing and proposed impervious surfaces. A copy of all approved permit applications shall be required to be filed in the office of the county zoning agency. All county shoreland zoning ordinances shall provide that permits shall expire if construction has not commenced by a time limit established in the county ordinance.

(4) Regular inspection of permitted work in progress to insure conformity of structures and other activities with the requirements of the county shoreland zoning ordinance.

(5) A variance procedure which authorizes the appropriate local decision making body to grant a variance from the terms of the ordinance in accordance with s. 59.694 (7)(c), Stats.

(6) A conditional use or special exception procedure for uses presenting special conditions. A county may not substitute a conditional use permit process for the variance process in situations where a variance is necessary because the use or activity is prohibited or is not allowed because specific standards are not satisfied.

(7) The county shall keep a complete record in the form of written minutes, a tape recording, transcript or other appropriate electronic methods of all proceedings before the board of adjustment or the county planning and zoning committee related to proposed variances, conditional uses or special exception permits, and shall retain these records in compliance with s. 19.21 and ch. 59, Stats.

(8) Written notice and a copy of all application forms and attachments submitted by the applicant shall be sent to the appropriate regional office of the department by the county at least 10 business days prior to all hearings on proposed variances, conditional uses, appeals for map or text interpretations, and map or text amendments, and the county shall submit to the same office of the department copies of decisions on variances, conditional uses, appeals for map or text interpretations, and map or text amendments within 10 business days after they are granted or denied.

(9) Mapped zoning use districts and the recording, on an official copy of the map, of all use district boundary amendments. As updated Wisconsin wetland inventory maps become available, a county shall adopt the updated maps for shoreland-wetland zoning districts within 6 months of final completion of the map. The boundaries of the shoreland zone and the location of navigable waters are not required to be mapped if described in the text of the ordinance.

(10) The establishment of appropriate penalties for violations of the requirements of the ordinance, including at a minimum forfeitures of not less than $10 and not more than $1,000 per violation, or twice the amount of any permit fee that the violator did not, but should have, paid, whichever is more. Each day of continued violation is a separate offense. Compliance with the ordinance shall also be enforceable as provided in s. 59.69 (11), Stats.

(11) The prosecution of violations of the ordinance.

(12) The procedure that is to be followed to process applications from persons who claim to be disabled and who are requesting that they be allowed to take action that would otherwise be prohibited under the shoreland zoning ordinance because of their disability. In order to allow a disabled person who is entitled to reasonable accommodations under the Americans with Disabilities Act, the federal Fair Housing Act or the Wisconsin Open Housing Law to take action that would otherwise violate the requirements of the county's shoreland zoning ordinance, a county shall issue a special administrative permit to the disabled person. All structures constructed for use by the disabled shall be located, designed, constructed and maintained to minimize runoff to navigable waters and avoid any adverse impact on fish and wildlife habitat and natural scenic beauty. A county may not issue variances to disabled persons unless the statutory variance criteria in s. 59.694 (7)(c), Stats., are satisfied for the lot or structure in question.

Note: The Americans with Disabilities Act ("ADA"), 42 USC 12101 to 12213, requires states and local units of government to take action to avoid discriminating against disabled persons in their employment practices, in public accommodations and in all programs, activities and services provided by the governmental entity. The federal Fair Housing Act, 42 USC 3601 to 3631, and the Wisconsin Open Housing Law, s. 106.50, Stats., require local governments to make "reasonable accommodations" in the application of zoning ordinances in order to provide equal opportunity to housing to disabled persons. However, the issuance of a variance is not the appropriate mechanism for granting "reasonable accommodations" that are required because of a person's disabilities because, under Wisconsin law, variances can only be granted based on the unique characteristics of the property.

SECTION 23. NR 115.27 is created to read:

NR 115.27 Department duties. (1) ASSISTANCE TO COUNTIES. The department shall provide advice and assistance to a county in the development, adoption, administration and enforcement of their shoreland zoning ordinances, consistent with the shoreland protection objectives found in s. 281.31, Stats.

(2) REVIEW AND APPROVAL OF SHORELAND ZONING ORDINANCES. (a) Compliance with the requirements of s. 59.692, Stats., will be determined by the department by comparing the shoreland zoning ordinance that has been enacted by a county with the minimum standards for shoreland regulation contained in this chapter. The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with s. 59.692, Stats., and this chapter.

(b) The department shall periodically reevaluate shoreland zoning ordinances to ascertain their continuing compliance with this chapter. A county shall keep its shoreland zoning ordinance current, effective and workable to retain its status of compliance.

(c) The department shall review and approve all proposed shoreland zoning ordinance amendments, including amendments to shoreland wetland zoning districts pursuant to s. NR 115.07 (5), to ensure the proposed ordinance will retain its status of compliance with s. 59.692, Stats., and this chapter. Ordinance amendments shall be sent to department's central office in Madison at P.O. Box 7921, Madison, WI 53707-7921.

(d) Once a county ordinance has been revised or amended, the department shall review the ordinance and notify the county of approval or denial of the ordinance. The county shoreland zoning ordinance shall meet or exceed the standards of this chapter before the department issues a certificate of compliance. A county must have a department approved shoreland zoning ordinance to be considered in compliance with the requirements of s. 59.692, Stats.

(3) DETERMINATION OF ORDINANCE NONCOMPLIANCE. (a) A county that has a shoreland zoning ordinance that does not meet the minimum standards contained in this chapter shall be deemed to be in noncompliance with the requirements of s. 59.692, Stats.

(b) If a county fails to modify its ordinance to meet the minimum standards in this chapter within 2 years after the effective date of this rule [revisor insert date], the department shall adopt a superseding ordinance amendment for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats. All costs for action by the department shall be borne by the noncompliant county. The department may grant an extension of time to modify an ordinance if the department determines the extension is in the public interest.

(c) If a county fails to modify its ordinance to meet the minimum standards in this chapter within 6 months after a notification of noncompliance is sent to the county for ordinance amendments other than in (b), the department shall adopt a superseding ordinance amendment for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats. All costs for action by the department shall be borne by the noncompliant county. The department may grant an extension of time to modify an ordinance if the department determines the extension is in the public interest.

(4) MONITORING OF ZONING DECISIONS. It is the responsibility of the department, to aid in the fulfillment of the state's role as trustee of its navigable waters, to monitor the administration and enforcement of shoreland zoning ordinances. In so doing, the department:

(a) Shall review decisions granting conditional uses, variances and appeals to ensure compliance with the county shoreland zoning ordinance and this chapter.

(b) May appeal the actions of county zoning officials to county boards of adjustment, under s. 59.694 (4), Stats.

(c) May seek certiorari review of the decisions of boards of adjustment, under s. 59.694 (10), Stats.

SECTION 24. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2)(intro.), Stats.

SECTION 25. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By_____
Scott Hassett, Secretary

(SEAL)