The attached guidance, "**Wetland Handbook Individual Permit Chapter, Section V.C.4. Limiting the Scope of the Practicable Alternatives Analysis"**, was developed for use by Department staff in the Bureau of Watershed Management when assessing how to implement the limiting of the scope of the practicable alternatives analysis in state statute when reviewing wetland individual permit applications.

The regulation of wetlands can be found under Wisconsin Statutes Chapter 281.36. These wetland regulations are applicable to proposed activities that will result in a discharge of dredged or fill material into wetlands. On September 1, 2016 new statutory language will go into effect that adds to the limiting of the scope of practicable alternatives analysis that already exists in state law. This guidance section will guide department staff on when the limiting of the scope of avoidance and minimization is applicable to sites where an applicant is requesting wetland fill.

V.C.4. Limiting the Scope of the Practicable Alternatives Analysis

The Department is required to limit its review of alternatives under section 281.36(3n)(a), Stats. to those alternatives that are located at the site of the discharge and that are located adjacent to that site if the applicant has demonstrated any of the following:

1. that the proposed project causing the discharge will result in a demonstrable economic public benefit,
2. that the proposed project is necessary for the expansion of an existing industrial, commercial, or agricultural facility that is in existence at the time the application is submitted, or
3. that the proposed project will occur in an industrial park that is in existence at the time the application is submitted."

Section 281.36(1)(am), Wisconsin Statutes, defines the term "demonstrable economic public benefit" as it relates to the limiting of the review of alternatives to mean an economic benefit to the community or region that is measurable, such as increased access to natural resources, local spending by the proposed project, employment, or community investment.

To understand this concept, it helps to look at each of the four words and how they work together. To be 'demonstrable,' the economic benefit to the public must be self-evident and provable. The term 'economic' is generally defined as the production, distribution and consumption of goods and services including access to natural resources. When considering what is 'public,' the resulting economic benefit must be non-exclusive. So for example, to begin determining whether a proposal could be considered to have a "demonstrable economic public benefit" an applicant should be able to provide the Department the following information: Any benefits should be self-evident; should translate overall to long-term job creation and economic growth; and what the benefits will be to the greater community (not just the applicant).

4. The Department shall also limit its review of alternatives to those practicable alternatives that are located on the property owned by the applicant for a project involving fewer than 2 acres of wetland if the project is limited to one of the following:
    - Construction or expansion of a single-family home and attendant features
    - Construction or expansion of a barn or farm building
    - Expansion of a small business project

    281.36(1)(ct) "Small business" has the meaning given in s. 227.114(1) which defines a small business as a business entity, including its affiliates, which is independently owned and operated

and not dominant in its field, and which employs 25 or fewer full-time employees or which has a gross annual sales of less than $5,000,000.

There is an exception to review limit #4 above which states “A lot created as part of a subdivision, land division, or other development that is initiated after July 1, 2012, is not eligible for the limited review.

In order to ensure consistent interpretation, if at any time pre-application or during application review you determine that the demonstrable economic public benefit may apply, contact your supervisor and the Wetland Policy Coordinator to discuss the case-specific facts, make a determination, and identify the information that an applicant will need to submit to demonstrate this criteria applies. Each determination will be documented and tracked so we can gather information and develop further guidance as needed.

Note that the term “facility” includes but is not limited to structures.

Note that federal law does not contain a provision for limiting the scope. There may be cases when this state provision applies, where the ACOE may be reviewing, and requiring the applicant to analyze, a broader set of alternatives than the Department.

For the purposes of implementing this provision, “located adjacent to that site” means a property that is contiguous and abutting the property where the project is proposed, with at least one shared property line. Two properties are still adjacent, even if a road, railroad or right-of-way separates them. Land transfer or subdivision of parcels cannot be used to eliminate alternatives that were located adjacent to the site.