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SOME NOTES ON THIS DOCUMENT

The format for this document is as follows:

Language from the Department of Natural Resources 1985 "Model County Shoreland Zoning Ordinance" is reprinted exactly as published in that document.

Within sections of that text are sections that are in *bold italics*. This text includes either ordinance provisions adopted by counties that go beyond the minimum NR 115 standards, or an acceptable alternative way of accomplishing the standard. In some cases you'll find suggested ordinance language from DNR's shoreland management program evaluation, or language suggested from DNR program guidance. The "Commentary" column notes scientific support for adopting similar language, as well as observations about the language's likely effect on ordinance administration. References to "the literature review" in this column are supported by Effectiveness of Shoreland Zoning Standards to Meet Statutory Objectives: A Literature Review with Policy Implications. The Reference Guide at the end of this report provides information about this and other resources.

Why are we doing this? To share more broadly the grassroots efforts at improving ordinance accomplishment of shoreland protection goals, to eliminate the need for counties to "reinvent the wheel," and to serve as foundation for further DNR support to counties wishing to make some ordinance revisions.

PLEASE NOTE: This is a **reference** document; do not adopt it in its entirety! We encourage county adoption of appropriate sections. Under most circumstances, counties are free to adopt standards that are more restrictive than state guidelines. One exception, however, is wetland permitted uses. Here, counties cannot vary from the permitted and prohibited uses listed in NR 115.

We believe that the ordinance text presented here is current as of this printing. However, counties may have made amendments since the version printed here. To discuss the literature review support information, correct references, suggest other examples of innovations for inclusion in subsequent versions, or suggest how updates to this document could be more useful to you, please contact:

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1.0 STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE AND TITLE

Ordinance Language

Commentary

1.1 STATUTORY AUTHORIZATION

This ordinance is adopted pursuant to the authorization in ss. 59.97, 59.971, 59.99, 87.30 and 144.26, Wis. Stats.

DNR Recommended Language:

“1.1 STATUTORY AUTHORIZATION. This ordinance is adopted under the authority of s. 59.692, Wis. Stats., in order to satisfy the requirements of s. 59.692 and s. 87.30, Wis. Stats., and to implement ss. 59.69, 59.694, 281.31, and 236.45, Wis. Stats.”

Unless the shoreland and floodplain provisions are clearly adopted under the authority of s. 59.692 (formerly 59.971), Wis. Stats. , they technically require town approval to be in force. Suggested new language corrects for this and includes the new statutory references, as recodified in 1995.

The various statutes cited deal with the following:

- s. 59.692 Requires counties to adopt shoreland ordinances, Authorizes DNR to promulgate rules for minimum standards and to adopt superseding ordinances if necessary.
- s. 87.30 Requires counties to adopt floodplain ordinances. Sets minimum standards and authorizes DNR to adopt superseding ordinances if necessary.
- s. 281.31 Authorizes shoreland zoning and establishes the public purpose of navigable waters protection.
- s. 236.45 Authorizes local subdivision regulation and review.

1.2 FINDING OF FACT

Uncontrolled use of the shorelands and pollution of the navigable waters of ___ County would adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The legislature of Wisconsin has

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Ordinance Language

delegated responsibility to the counties to 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 structures and land uses; and to preserve shore cover and natural beauty. This responsibility is hereby recognized by __ County, Wisconsin.

Commentary

1.3 PURPOSE

.For the purpose of promoting the public health, safety, convenience and welfare, this ordinance has been established to:

State and federal law require any restriction on private property to have a “reasonable relation” to a legitimate public purpose. Without an explicit purpose statement, courts would have to guess as to legislative intent, possibly leading to misinterpretation. Wisconsin courts have traditionally viewed health, safety, habitat and environmental concerns as legitimate public purposes.

1.31 FURTHER THE MAINTENANCE OF SAFE AND HEALTHFUL CONDITIONS AND PREVENT AND CONTROL WATER POLLUTION THROUGH:

- (1) Limiting structures to those areas where soil and geological conditions will provide a safe foundation.
- (2) Establishing minimum lot sizes to provide adequate area for private sewage disposal facilities.
- (3) Controlling filling and grading to prevent serious soil erosion problems.

1.32 PROTECT SPAWNING GROUNDS, FISH AND AQUATIC LIFE THROUGH:

- (1) Preserving wetlands and other fish and aquatic habitat.
 - (2) Regulating pollution sources.
-

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Ordinance Language

- (3) Controlling shoreline alterations, dredging and lagooning.

DNR Recommended Language:

- (4) *Establishing minimum lot sizes and shoreland buffer standards to limit cumulative impacts to aquatic life habitat.*

1.33 CONTROL BUILDING SITES, PLACEMENT OF STRUCTURES AND LAND USES THROUGH:

- (1) Separating conflicting land uses.
- (2) Prohibiting certain uses detrimental to the shoreland area.
- (3) Setting minimum lot sizes and widths.
- (4) Regulating side yards and building setbacks from waterways.

1.34 PRESERVE SHORE COVER AND NATURAL BEAUTY THROUGH:

- (1) Restricting the removal of natural shoreland cover.
- (2) Preventing shoreline encroachment by structures.
- (3) Controlling shoreland excavation and other earth moving activities.
- (4) Regulating the use and placement of boathouses and other structures.

DNR Recommended Language:

- (5) *Establishing minimum lot sizes to limit and shoreland buffer standards to limit cumulative impacts to natural beauty and shore cover.*

1.4 TITLE

Commentary

The model only discusses immediate impacts. Inclusion of measures intended to control cumulative impacts strengthens and clarifies the ordinance.

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Ordinance Language

Commentary

Shoreland Zoning Ordinance for__ County, Wisconsin.

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2.0 GENERAL PROVISIONS

Ordinance Language

Commentary

2.1 AREAS TO BE REGULATED

Areas regulated by this ordinance shall include all the lands (referred to herein as shorelands) in the unincorporated areas of __ County which are:

2.11 Within one thousand (1,000) feet of the ordinary highwater mark of navigable lakes, ponds or flowages. Lakes, ponds or flowages in _____ County shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources publication "Surface Water Resources of _____ County" or are shown on United States Geological Survey quadrangle maps or other zoning base maps.

2.12 Within three hundred (300) feet of the ordinary highwater mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. Rivers and streams in __ County shall be presumed to be navigable if they are designated as continuous waterways or intermittent waterways on United States Geological Survey quadrangle maps. Flood hazard boundary maps, flood insurance rate maps, flood boundary-floodway maps, county soil survey maps or other existing county floodplain zoning maps shall be used to delineate floodplain areas.

*Florence County:
In the Wild River Zoning District, extends shoreland jurisdiction to within 400 feet of the Popple River, or to the visible horizon as seen from the water, whichever is greater.*

2.13 Determinations of navigability and ordinary highwater mark location shall initially be made by the zoning administrator. When questions

Chapter 59.692 of the statutes defines "shorelands" as the area within 1,000' of a navigable lake or within 300' of a navigable stream, or to the landward side of the floodplain, if that distance is greater.

The shoreland area is the area where one could expect land activities to have an impact on water quality, habitat, natural scenic beauty and other factors identified for protection by the Wisconsin legislature. Depending on local conditions, unregulated activities outside the 1,000-foot or 300-foot zone could significantly affect navigable waters.

Ideally, shoreland zoning jurisdiction would be based on individually delineated watershed boundaries, but the tremendous variety of factors makes this impractical for a statewide program. The statutorily defined jurisdiction serves as a "best-guess" compromise to meet conditions across the state.

Florence County expands its area of jurisdiction to protect the Popple River, a state designated Wild and Scenic River. The Florence County ordinance also establishes a flexible "viewshed" to adequately regulate any activities visible from the water.

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Ordinance Language

Commentary

arise, the zoning administrator shall contact the appropriate district office of the Department for a final determination of navigability or ordinary highwater mark.

DNR Recommended Language:

Change references to “district office of the Department” to “local office of the Department.”

Change reflects DNR reorganization.

2.14 Under s. 144.26(2)(d), Wis. Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, this shoreland zoning ordinance does not apply to lands adjacent to farm drainage ditches if:

Because farm drainage ditches meeting the listed criteria are specifically exempted from shoreland zoning by a separate section of statute, counties do not have the authority to impose more restrictive standards.

DNR Recommended language:

Change reference to “s.144.26(2)(d)” to “s. 281.31 (2m)”

Change reflects 1995 recodification.

- (a) Such lands are not adjacent to a natural navigable stream or river;
- (b) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
- (c) Such lands are maintained in nonstructural agricultural use.

2.2 SHORELAND ZONING MAPS

The maps designated below are hereby adopted and made part of this ordinance. They are on file in the office of the zoning administrator for__ County.

- (1) United States Geological Survey Quadrangle Maps for__ County (revised__(date)).
- (2) Wisconsin Wetland Inventory maps stamped "FINAL" on__(date).

Counties may have received Wisconsin Wetland Inventory Maps from DNR that contain updated wetland information. We strongly encourage adoption of the newest version of such maps.

Floodplain maps should be those formally adopted by the county under NR

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Ordinance Language

(3) Floodplain zoning maps identified as ___ and dated ___.

Commentary

116, and should meet the standards described in NR 116.09.

2.3 COMPLIANCE

The use of any land or water, the size, shape and placement of lots, the use, size, type and location of structures on lots, the installation and maintenance of water supply and waste disposal facilities, the filling, grading, lagooning, dredging of any lands, the cutting of shoreland vegetation, the subdivision of lots, shall be in full compliance with the terms of this ordinance and other applicable local, state or federal regulations. (However, see section 9.0 for standards applicable to nonconforming uses.) Buildings, signs and other structures shall require a permit unless otherwise expressly excluded by a provision of this ordinance. Property owners, builders and contractors are responsible for compliance with the terms of this ordinance.

Builders and contractors frequently apply for permits on behalf of landowners, and so have a responsibility to understand and comply with local zoning regulations. Although property owners are ultimately responsible for violations on their land, owners may file lawsuits against builders or contractors if violations are a result of their actions.

2.4 MUNICIPALITIES AND STATE AGENCIES REGULATED

Unless specifically exempted by law, all cities, villages, towns, and counties are required to comply with this ordinance and obtain all necessary permits. State agencies are required to comply when s. 13.48(13), Wis. Stats., applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when s. 30.12(4)(a), Wis. Stats., applies.

This clause applies to municipalities doing work in the county's jurisdiction, not within the boundaries of an incorporated area (unless in a formerly zoned area that has been annexed). Section 13.48 of the statutes requires the State to comply with local zoning for building or facility projects that benefit a state agency. Section 30.12 specifically exempts state DOT highway and bridge projects from local zoning, but requires DOT to minimize environmental impacts. DNR and DOT have established an interdepartmental liaison process for this purpose.

2.5 ABROGATION AND GREATER RESTRICTIONS

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Ordinance Language

Commentary

The provisions of this ordinance supersede all the provisions of any county zoning ordinance adopted under s. 59.97, Wis. Stats., which relate to shorelands. However, where an ordinance adopted under a statute other than s. 59.97, Wis. Stats., is more restrictive than this ordinance, that ordinance shall continue in full force and effect to the extent of the greater restrictions, but not otherwise.

DNR Recommended Language:

Change references to “s. 59.97” to “s. 59.69.”

2.51 This ordinance shall not require approval or be subject to disapproval by any town or town board.

2.52 If an existing town ordinance relating to shorelands is more restrictive than this ordinance or any amendments thereto, the town ordinance continues in all respects to the extent of the greater restrictions but not otherwise.

2.53 This ordinance is not intended to repeal, abrogate or impair any existing deed restrictions, covenants or easements. However, where this ordinance imposes greater restrictions, the provisions of this ordinance shall prevail.

2.54 The following provisions of the _ County Zoning Ordinance are hereby incorporated by reference; these provisions shall only apply to the shoreland area where they impose greater restrictions than this ordinance otherwise imposes:

2.6 INTERPRETATION

In their interpretation and application, the provisions of this ordinance shall be

Change reflects 1995 recodification.

Wisconsin counties engage in two types of zoning, general zoning and shoreland zoning, each governed by a separate section of statute.

Under general zoning, governed by Section 59.69, townships may decide whether to adopt county zoning when the county either first adopts, or comprehensively rewrites, the general zoning ordinance. Under shoreland zoning, governed by Section 59.692, towns must abide by county standards and cannot “opt out.”

The reasons for this differential approach lie in the public trust doctrine and the state’s direct responsibility to protect the waters of the state. No equivalent state responsibilities exist for general land use. This also explains why shoreland zoning is mandatory for counties, while general zoning is voluntary.

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Ordinance Language

Commentary

held to be minimum requirements and shall be liberally construed in favor of the county and shall not be deemed a limitation or repeal of any other powers granted by Wisconsin Statutes. Where a provision of this ordinance is required by a standard in ch. NR 115, Wis. Adm. Code, and where the ordinance provision is unclear, the provision shall be interpreted in light of the ch. NR 115 standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

2.7 SEVERABILITY

If any portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

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3.0 LAND DIVISION REVIEW AND SANITARY REGULATIONS.

At least for new developments, subdivision control can more effectively resolve many issues surrounding shoreland development than can zoning regulation. Subdivision control allows counties to use site-specific information to plan developments to avoid potential conflicts; zoning depends on using police power to regulate landowners' behavior. The subdivision review process also allows municipalities the opportunity to negotiate with developers for deed restrictions, easements or specific information recorded on plat documents. Such non-regulatory protections can be custom-tailored to the site and may go beyond local zoning standards. For an example of negotiated covenants, see the "Emerald Shores" restrictive covenants in Green Lake County.

3.1 LAND DIVISION REVIEW

Ordinance Language	Commentary
<p>The county shall review, pursuant to s. 236.45, Wis. Stats., all land divisions in shoreland areas which create 3 or more parcels or building sites of 5 acres each or less within a 5-year period. In such review the following factors shall be considered:</p>	<p>NR 115 defines subdivisions more broadly than does Chapter 236, which requires Dept. of Commerce review of only those land divisions that create 5 or more parcels of 1 ~ acres or less. Section 236.45, however, grants counties and municipalities broad powers to regulate land division as they see fit, including the ability to regulate divisions resulting in fewer or larger lots.</p>
<p><u>Ashland, Barron, Burnett, Calumet, Crawford, Dodge, Dunn, Jackson, Langlade, Monroe, Polk, Price, Rock, Sauk, St. Croix, Taylor, Vilas, Walworth & Waushara Counties:</u> <i>Review a broader category of land divisions than required by NR 115. Number and size of lots required to trigger county review and required minimum standards vary widely. A few counties review EVERY division of land, regardless of number or size.</i></p>	<p>According to a 1997 study by the University of Wisconsin-Madison Extension, at least 44 counties have adopted subdivision control ordinances as authorized by Chapter 236 of the statutes (Ohm, 1997). Specific lot design and minimum standards vary too widely to discuss in detail in this report, although most counties with subdivision ordinances apply stricter standards than those contained in Chapter 236.</p>
<p>(a) Hazards to the health, safety or welfare of future residents. (b) Proper relationship to adjoining areas. (c) Public access to navigable waters, as required by law. (d) Adequate storm drainage facilities. (e) Conformity to state law and administrative code provisions.</p>	<p>As with other land regulations, the most restrictive combination of general zoning, shoreland zoning or subdivision regulations applies.</p>
<p><u>Sawyer County:</u> <i>Requires mainland access for every two lots developed on islands. Access lots are developed as a conditional use.</i></p>	

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3. (NEW) BACKLOT DEVELOPMENT

What is backlot development?

Backlot development is a real estate development that incorporates often narrow portions of riparian frontage shared by all "backlot" (subdivision lots that do not abut the water) owners. This type of development, also called "keyhole" or "pyramid" development, results in subdivisions consisting of many offshore lots accessing a lake or river via a narrow neck of land. Developers can deed an undivided interest in lots abutting the water. All lot owners within the subdivision become "riparian owners," each with their own pier or boat slip. The heavy boat traffic that results promotes overcrowding and contributes to environmental degradation. So far, such pressures have occurred primarily on lakeshores, but could apply to rivers as well.

Why is backlot development a concern?

The Inland Lake Use Task Force Report stated that backlot development results in intensification of shore use. It may also contribute to overcrowding by watercraft. Conflicts with adjoining properties, problems with on-land boat storage and unusually long piers can also arise. High waterfront property values will push toward conversion of all shores to more intensive uses, either development supplying backlots with lake shore amenities, or apartments and marinas. The entire shore could become swimming beaches, piers and boat docks or moorings if these pressures go unchecked, at the expense of aesthetics, scenic beauty, and fish and wildlife habitat. These processes have occurred on oceanfront development in Florida and elsewhere. Similar development could happen in Wisconsin inland lakes if land becomes "too valuable" for use as park land, or for single family homes.

In its April 1985 issue, Planning & Zoning News concluded that addressing problems posed by back lot development should be done through a coordinated inland lake management plan. Adopting ordinance provisions similar to these may be considered a "stopgap" measure until a specific management plan and a regulatory mechanism can be prepared. The article recommends that management plan be based on carrying capacity and be coordinated with the entire range of legal and administrative authorities that exist.

Ordinance Language	Commentary
<p><i>1980 Subcommittee of Inland Lake Use Task Force</i> <i>"All private lake access points providing access from more than two dwelling units on back lots which do not front directly on the water or from more than two dwelling units on lots which do not meet the minimum water front lot width of this (county) ordinance are special exceptions. Such private access points should have a minimum of forty (40) feet in width at the ordinary highwater mark and shall provide an additional seven and a half(7.5) feet of width for each additional dwelling unit. The minimum width for private access points for more-than 10 dwelling units shall be established by the administrative agency granting the special exception, but shall in no case be less than 100 feet in width. In addition, the agency may attach conditions governing on-land storage of boats in length, types and other specifications for piers, docks, and wharves. The agency shall</i></p>	<p>The Task Force recommended that municipalities require, as a conditional use, a certain minimum frontage on the lake depending on the total number of dwelling units having access. Counties have also tried to deal with this problem by imposing larger lot sizes on off-water lots, imposing conditions on access lots, or simply prohibiting the development of water access lots serving more than one landowner.</p>

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Ordinance Language

Commentary

consider the size, shape, depth, present and potential use of the lake and the effect of the private access on public rights in navigable waters.”

Green Lake County:

“To issue permits for the development of shoreline property as an access lot on Green Lake for use by owners of back lots, subject to the following requirements which shall be made conditions of any conditional use permit granted:

a) The minimum width of an access lot shall be one hundred (100) feet measured at the lot's narrowest point.

b) The proposed access lot shall provide at least 10 feet of lake frontage for each back lot dwelling which will use the access lot for lake access, exclusive of the buffer strips required under (e) below.

c) The proposed access lot shall be at least 20,000 square feet in area, not including space devoted to any public roadway or right of way which may intersect the access lot.

d) The back lots having access to the lake over the access lot must be situated so that they are contiguous to each other, excepting roadways, and their furthest boundary no more than 1000 feet from the back lot of the access lot.

e) The owner of the access lot shall either:

1. Provide proof of ownership of a buffer strip of at least 60 feet between the access lot and the lot line of any adjacent property used, or zoned for, residential purposes

OR

2. Provide written consents in recordable form of the owners of at least the first sixty feet of land adjoining both sides of the access lot stating that the owners of this land consent to the proposed use of

Access lots serving multiple landowners may generate a high volume of traffic, and so have the potential to become nuisances to neighboring landowners. Green Lake County imposes conditions on access lots to reduce conflicts with nearby land uses, but does not set density standards for second-tier development.

Although providing protections against the immediate effects of access lot development, Green Lake's ordinance does not address the overall issue of water overcrowding.

Requiring access lots to at least meet minimum unsewered lot size standards eliminates the practice of allowing access through a narrow strip “left over” from other platting.

Shoreland Zoning Resource Guide / Annotated Model Ordinance

Ordinance Language

Commentary

the access lot.

f) The owner of the access lot shall provide evidence that the proposed access lot is subject to enforceable deed restrictions, which restrictions shall:

- 1. Recite in reasonable detail the specific purposes and uses of said access lot if the conditional use permit is granted.*
- 2. List the number of existing or potential back lot dwellings whose owners and tenants are to use the access lot.*
- 3. State that violation of the deed restrictions shall subject the owner of the access lot to revocation of the conditional use permit and/or penalties as set forth under Section 9 of this ordinance.*

g) Conditions that shall be required for an access site/lot shall include and are not limited to waste containment, sanitary facility, noise limits, screening, parking, parking controls, there shall be no parking within 75 feet of the ordinary high water mark, time requirements, lighting and identification of sites, fish cleaning, gasoline and oil handling and disposition of all waste materials. Any conditional use permit shall include approval as per WI statutes 30 and NR 326.”

Sawyer County:

Sets 100' minimum width and 200' minimum depth for access lots, with requirements for a 25' vegetative buffer along side lot lines. Sets maximum of 4 residential lots to be served by one access lot.

Price, Vilas & Iron Counties:

Impose greater minimum lot sizes for off-water lots, ranging from 1 to 1.5 acres.

Waukesha County:

“No pyramiding as defined herein shall be permitted on any lands fronting on a lake except as may be specifically permitted accessory to a marina or resort and which may be allowed under the terms of a conditional use permit for a planned unit development.”

Chapter 30 and NR 326 regulate any alteration to navigable waterways, including placement of all piers and boat shelters.

Like Green Lake County, Sawyer County requires buffers to shield access lots from neighbors. Sawyer goes further, however to establish maximum numbers of lots served by one access lot.

Larger lot sizes for off-water lots reduce overall density of development, reducing the pressure on lake use.

Waukesha and Waupaca take the most restrictive position on backlot development by effectively prohibiting the practice of creating access lots. Properly designed cluster development projects compensate for denser development with dedicated open space (see Section 3.22), and so should be exempt from access lot restrictions

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Ordinance Language

Commentary

Waupaca County:
Requires shoreline frontage, equivalent to the minimum lot width in the zoning district, for each dwelling unit granted riparian or lake access.

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3.2 LIMITED REZONING TO ACHIEVE REDUCED LOT SIZES AND SETBACKS

Planned residential unit development, or cluster development, has the potential to greatly reduce environmental impacts on a shoreland area. Through this process, developers and municipalities can locate buildings, roadways and other improvements in the least sensitive portions of a lakeshore, while protecting more sensitive areas through dedicated open space. This allows for large blocks of contiguous habitat and ensures that some portion of the lakeshore will remain undeveloped. In practice, however, developers have platted few cluster subdivisions, perhaps because the current ordinance language offers little financial incentive to undertake the more complex technical issues and additional design standards.

For more information on cluster development, including Wisconsin examples and model ordinance language, see the *Rural Cluster Development Guide(Planning Guide Number 7)*, published by the Southeastern Wisconsin Regional Planning Commission.

Ordinance Language	Commentary
<p>3.21 PURPOSE. In some instances where an individual lot or small tract of land has unique characteristics, such as unique terrain, which would result in unnecessary hardship as defined in section 13.2(14), if the owner were required to comply with one or more of the requirements for minimum lots sizes, width and setback, the board of adjustment may grant a variance. In other instances where larger areas are involved, the appropriate method for seeking a relaxation of the same minimum standards is by rezoning to establish a Planned Residential Unit Development overlay. The Planned Residential Unit Development is intended to permit smaller lots and setbacks where the physical layout of the lots is so arranged (often by setting them back farther from navigable water) as to better assure the control of pollution and preservation of ground cover than would be expected if the lots were developed with the normal lot sizes and setbacks and without special conditions placed upon the Planned Residential Unit Development at the time of its approval. A condition of all Planned Residential Unit Development is the preservation of certain open space, preferably on the shoreland, in perpetuity.</p>	<p>Variations are intended to provide administrative relief to individual landowners under unique circumstances. Variations are not appropriate for widespread relaxation of zoning standards. In theory, Planned Unit Development allows for smaller lot sizes and dedicated open space to avoid environmentally sensitive areas and provide better resource protection.</p> <p>However, this is another example where NR 115 and the state model ordinance are inconsistent. The current version of NR 115 makes no mention of cluster development, and does not permit reduction of lot sizes below 20,000 square feet for unsewered areas or 10,000 square feet in sewer areas. This means that, barring a rule change, cluster development is likely to be an effective tool only in those counties that have adopted larger minimum lot sizes in shoreland areas. Such counties could reduce lot sizes to state minimums, but no smaller, under the Planned Residential Unit Development process.</p>
<p>3.22 REQUIREMENTS FOR PLANNED RESIDENTIAL UNIT DEVELOPMENT. The county board may at its discretion, upon its own motion or upon petition, approve a Planned Residential Unit Development either by approving first an overlay district and then a plat or by approving only a plat for the specific planned residential project upon finding, after a public hearing, that all of the following facts exist:</p>	<p>Technically, implementing a Planned Residential Unit Development requires re-zoning the parcel with a PUD overlay district. This clause allows counties to approve PUD plats and the overlay district in a single step, streamlining the approval process and avoiding the need to schedule additional public hearings.</p>

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Ordinance Language	Commentary
(1) Area. The area proposed for the Planned Residential Unit Development is at least 40 acres in size.	Because PUDs depend on dedicated open space, parcels must be large enough to accommodate housing, lots, streets and open areas.
(2) Pollution Control. The location and nature of the septic systems which will serve the homesites individually or collectively will assure that effluent from the septic systems will not reach the ground or surface waters in a condition which would contribute to health hazards, taste, odor, turbidity, fertility or impair the aesthetic character of navigable waters.	
(3) Preservation of Ground Cover. The location of homesites and the dedication of part of the land for use by the public or residents of the Planned Residential Unit Development will preserve the ground cover of the shoreland and scenic beauty of the navigable water, prevent erosion, and other pertinent factors. Land not used for lots and streets shall be dedicated in perpetuity to remain in open space. This may be accomplished by conveyance in common to each of the owners of lots in the development or to a corporation formed by them, or by dedication to the county, town or municipality. Lands dedicated to the public must be accepted by action of the governing body of the accepting unit of government. If the land is to be conveyed to owners of lots in the development, a homeowner's association or similar legally constituted body shall be created to maintain the open space land. Any restriction placed on platted land by covenant, grant of easement or any other manner which was required by a public body or which names a public body as grantee, promisee or beneficiary, shall vest in the public body the right to enforce the restriction at law or in equity against anyone who has or acquires an interest in the land subject to the restriction.	The most crucial part of a successful cluster or Planned Unit development is the dedication of common open space. Such developments must have a legal mechanism to ensure that common areas remain open in perpetuity and are properly maintained. The model lists several alternatives, as well as describes mechanisms for enforcement of deed restrictions and covenants. To avoid conflicts, taxation of open space lots should be divided equally among PUD landowners, with payment directly to the municipality. For further information about this and other open space management issues, see the <i>Rural Cluster Development Guide (SEWRPC, 1996)</i> .

Waupaca County:

The model ordinance sets no minimum requirements for open space. Waupaca

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Ordinance Language

Commentary

“At least 50% of the gross project area shall be dedicated as permanent open space . . . ”

County corrects this by setting explicit minimum requirements.

- (4) Density. The number of platted homesites shall not exceed those which would have been possible if the same land were platted in accordance with the minimum lot sizes, setbacks and widths provided by the applicable provisions of the zoning ordinance. This figure shall be determined by dividing the total area of the subdivision, excluding streets, by the minimum lot sizes required by section 4.0 of this ordinance.

Waupaca County:

“The number of platted homesites shall not exceed 150% of those which would have been possible if the same land were platted in accordance with the minimum lot sizes, setbacks and widths provided by the applicable provisions of the zoning ordinance.”

By providing a “density-bonus,” Waupaca County’s ordinance provides a financial incentive to developers to pursue planned unit development. The benefits of guaranteed open space and strict design standards offset the potential impact of additional lots.

- (5) Lot Sizes, Widths, Setbacks, and Tree-cutting. The lot sizes, widths, and setbacks shall not be less than those provided for in current statutes or ch. H85, Wis. Adm. Code, and shall not be so small as to cause pollution or erosion along streets or other public ways and waterways or so small as to substantially depreciate the property values in the immediate neighborhood. Shore cover provisions in section 6.0 shall apply except that maximum width of a lake frontage opening shall be 100 feet.

Lot sizes may not be reduced below the minimums required by NR 115.

DNR Recommended Language:

Change reference to “H85, Wis. Adm. Code” to “Comm 85, Wis. Adm. Code.”

Change reflects amendment to title of administrative rules, now administered by the Dept. of Commerce.

Waupaca County:

Replaces the general description above with specific design standards, dealing with building envelopes, roadways & infrastructure, and site development & land disturbing activities.

Explicit standards provide better guidance to developers, review staff and board members.

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Ordinance Language

Commentary

3.23 PROCEDURE FOR ESTABLISHING A PLANNED RESIDENTIAL UNIT DEVELOPMENT DISTRICT. The procedure for establishing limited rezoning in the form of a Planned Residential Unit Development district shall be as follows:

- (1) Petition. A petition setting forth all of the facts required in section 3.22 shall be submitted to the county clerk with sufficient copies to provide for distribution by the clerk as required by section 3.23(2).
- (2) Review and Hearing: The petition shall be submitted to the county zoning agency established as required by s. 59.97(3)(d), Wis. Stats., which shall hold a public hearing and report to the county board as required by law. Copies of the petition and notice of the hearing shall also be sent to the appropriate district office of the Department as described in section 11.2 of this ordinance.

This wording is vague and could lead to inconsistent petition applications. A better approach would be to clearly state what information is to be included in the petition, or to use a standard application form that includes standards to be met.

DNR Recommended language:

Change reference to “s. 59.97(3)(d)” to “59.69(3)(d).”

Change reflects 1995 recodification of statutes.

The county zoning agency's report to the county board shall reflect the recommendations of any federal, state or local agency with which the county zoning agency consults. If a petition seeks approval of a Planned Residential Unit Development plat without first seeking the granting of an overlay district, a hearing shall be held on such plat as in any regular amendment to the zoning ordinance. If, however, a hearing is first held on the overlay for a Planned Residential Unit Development district, a second public hearing need not be held in connection with the approval of a subsequent plat or plats which comply with the overlay district as approved.

- (3) Findings and Conditions of Approval. The county board shall make written findings as to the compliance or noncompliance of the proposed overlay district with each of the applicable requirements set forth in section 3.22. If the petition is granted in whole or part, the county board shall attach such written conditions to the approval as

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are required by and consistent with section 3.22. The conditions of approval shall in all cases establish the specific restrictions applicable with regard to minimum lot sizes, width, setbacks and the location of septic systems and the preservation of ground cover and open space.

- (4) Planning Studies. A landowner or petitioner may at their own expense develop the facts required to establish compliance with the provisions of section 3.22 or may be required to contribute funds to the county to defray all or part of the cost of such studies being undertaken by the county or any agency or person with whom the county contracts for such work.
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Commentary

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3.3 SANITARY REGULATIONS

Ordinance Language	Commentary
<p>The county shall adopt sanitary regulations for the protection of health and the preservation and enhancement of water quality.</p>	
<p>(a) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 112, Wis. Adm. Code.</p>	
<p><u><i>DNR Recommended Language:</i></u> <i>Change reference to “NR 112, Wis. Adm. Code,” to “NR 812, Wis. Adm. Code.”</i></p>	Change reflects re-numbering of administrative code.
<p>(b) Where a public sewage collection and treatment system is not available, design and construction of private sewage disposal systems shall be governed by a private sewage system ordinance adopted by the county under s. 59.065, Wis. Stats.</p>	
<p><u><i>DNR Recommended Language:</i></u> <i>Change reference to “s. 59.065 Wis. Stats.” to “s. 59.70 (5) Wis. Stats.”</i></p>	Change reflects 1995 recodification of statutes.

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4.0 DIMENSIONS OF BUILDING SITES

Lot width and size minimums are the most important means of controlling the overall cumulative impact of new shoreline development. Landowner behavior on any size lot is critical. The cumulative impact of many actions, which by themselves may be minor, degrades water quality, near-shore and riparian habitat and natural scenic beauty. Cumulative impacts include delivery of nutrients from construction sites, impervious surfaces, and excessive fertilizer and pesticide application, contributing to algal blooms and excessive submergent vegetation in lakes. Sediment delivery threatens fish habitat, by burying spawning beds and decreasing water clarity. Modifications of the littoral zone such as constructing piers, constructing seawalls, removing woody debris from the water, clearing out aquatic plants, placing sand blankets over the existing substrate, and removing overhanging vegetation from the shoreline alter and simplify complex natural habitat structure.

4.1 LOTS NOT SERVED BY PUBLIC SANITARY SEWER

Ordinance Language	Commentary
<p>4.11 MINIMUM AREA AND WIDTH FOR EACH MAIN BUILDING. The minimum lot area shall be 20,000 sq. ft. and the minimum average lot width shall be 100 feet with at least 100 feet of frontage at the ordinary highwater mark.</p>	<p>A 1990 study of shoreland zoning on six lakes in Oconto County found that larger lot sizes were correlated with less overall vegetative cutting and less overall shoreline modification. The amount of vegetation removed was found to be independent of lot size, because owners of both larger and smaller lots tended to concentrate tree cutting and brush removal on the center of the lot, and building sizes were comparable. However, trends toward building larger homes with established lawns could offset the potential of larger lot sizes to reduce vegetation modification.</p>
<p><u>Barron, Portage, St. Croix, Dodge, Kenosha, Kewaunee, Racine, Rock, Walworth, Ashland, Bayfield, Lincoln, Marinette, Marquette, Iron, Price, Washburn, Monroe & Jackson Counties, Town of Manitowish Waters, Vilas County:</u> <i>Have increased minimum lot sizes for all unsewered lots, ranging from 21,780 square feet to 1.5 acres.</i></p>	<p>In comprehensively zoned counties, minimum lot sizes typically vary with land use. Commercial, industrial or multi-family developments, for example, are likely to create more intense use, pollution or visual impacts than would residential development of a similar size. This argues for more restrictive density controls.</p>
<p><u>Walworth, Oconto, Oneida, Waupaca, Kenosha, Iron, Douglas, Rusk, Winnebago, Sawyer, Door, Bayfield, Dane, Racine, Florence, Waukesha, Shawano, Washburn, Calumet, Waushara, La Crosse, Burnett, Jackson, Monroe, Langlade, Eau Claire & Barron Counties:</u> <i>Provide for increased lot sizes and widths depending on underlying zoning district and/or type of lake/stream. Minimum lot sizes range from 1 acre to 40 acres and minimum widths range from 150' to 400'.</i></p>	<p>Reduces the density of “second-tier” development. See Section 3. __: Backlot Development for a more detailed discussion of this issue.</p>
<p><u>Price & Vilas Counties:</u> <i>Have greater minimum lot sizes for off-water lots, ranging from 1 to 1.5</i></p>	

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Ordinance Language	Commentary
<i>acres.</i>	
4.12 SIDE YARDS. There shall be a side yard for each main building. The minimum width of one main side yard shall be 10 feet. The minimum combined width of both main side yards shall be 25 feet. There shall be a side yard of 5 feet for accessory structures excluding fences.	
<u><i>Outagamie, Pierce, Kenosha, Portage, Rock, Walworth, Waukesha, Waushara & Wood Counties:</i></u> <i>Have larger side yard setbacks, ranging from 15 to 25 feet, for residential development. Most comprehensively zoned counties set minimum side yards based on the underlying zoning district, so non-residential uses typically must meet more stringent standards.</i>	

4.2 LOTS SERVED BY PUBLIC SANITARY SEWER.

Ordinance Language	Commentary
4.21 MINIMUM AREA AND WIDTH FOR EACH MAIN BUILDING. The minimum lot area shall be 10,000 sq. ft. and the minimum average lot width shall be 65 feet with at least 65 feet of frontage at the ordinary highwater mark.	
<u><i>Barron, Portage, Price, Washburn, Burnett, Langlade, Marathon, Pierce, Polk, Sawyer, Vilas, Waukesha, Waupaca, Door, Bayfield, Dane, Marinette, Oneida, Walworth, St. Croix, Calumet, Buffalo, Lincoln & Rock Counties:</i></u> <i>Have increased minimum lot sizes for all sewerred lots, ranging from 12,000 square feet to 1 acre.</i>	The literature review has called into question the wisdom of allowing smaller lot sizes and widths as an incentive for providing sanitary sewer service. Smaller lot sizes and widths in a sewerred subdivision result in increased cumulative impacts to shoreland and near-shore habitat. The increased impact of denser development makes trading smaller lots for sewer service an unwise trade. Counties should allow denser development allowances only through cluster development standards.
4.22 SIDE YARDS. The minimum width of one main side yard shall be 8 feet. The minimum combined width of both main side yards shall be 20 feet. There shall be a side yard of 4 feet for accessory structures excluding	

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Ordinance Language	Commentary
fences.	

4.3 SUBSTANDARD LOTS

Ordinance Language	Commentary
<p>4.31 SUBSTANDARD LOTS SERVED BY A PUBLIC SANITARY SEWER. A substandard lot served by a public sanitary sewer which is at least 7,500 sq. ft. in area and is at least 50 feet in width at the building setback line and at least 50 feet in width at the ordinary highwater mark may be used as a building site for a single family dwelling upon issuance of a zoning permit by the zoning administrator if it meets all of the following requirements:</p>	<p>The model provides an absolute minimum standard to allow flexibility and to reduce variance applications.</p>
(1) Such use is permitted in the zoning district.	
(2) The lot was on record in the county register of deeds office prior to the effective date of this ordinance.	
<p><u><i>DNR Recommended Language:</i></u> “(2) <i>The lot was on record in the county register of deeds office prior to the effective date of the initial county shoreland zoning ordinance,</i> _____.”</p>	
(3) The lot was in separate ownership from abutting lands prior to the effective date of this ordinance. If abutting lands and the substandard lot were owned by the same owner as of the effective date of this ordinance, the substandard lot shall not be sold or used without full compliance with the terms of this ordinance, including minimum area and width requirements found in sections 4.1 and 4.2 of this ordinance.	
(4) All other dimensional requirements of this ordinance (including side yard and setback) will be complied with.	

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Ordinance Language

Commentary

4.32 SUBSTANDARD LOTS NOT SERVED BY PUBLIC

SANITARY SEWER. A substandard lot not served by public sanitary sewer which is at least 10,000 sq. ft. in area and at least 65 feet in width at the building setback line and at least 65 feet in width at the ordinary highwater mark may be used as a building site for a single-family dwelling upon issuance of a zoning permit by the zoning administrator if it meets all of the requirements of section 4.31(1)-(4) of this ordinance.

4.33 OTHER SUBSTANDARD LOTS. Except for lots which meet the requirements of sections 4.31 or 4.32, a building permit for the improvement of a lot having lesser dimensions than those stated in sections 4.1 and 4.2 shall be issued only after granting of a variance by the board of adjustment.

4.4 LOTS IN CLUSTER SUBDIVISIONS

Lots in cluster subdivisions not served by public sanitary sewers may be reduced to the minimum allowed by the county private sewage system ordinance pursuant to the procedures set forth in section 3.2 of this ordinance.

For more information about cluster subdivisions, see Section 3.2: Limited Rezoning to Achieve Reduced Lot Sizes and Setbacks.

4.5 (NEW) TOTAL BUILDABLE LOT AREA

Impervious surfaces in a watershed increase and concentrate run off and sedimentation, which in turn can have drastic effects on habitat and water quality. Without permeable, vegetated surfaces to retain water and trap sediment, flash floods become more frequent, siltation and erosion destroy habitat and pollution loads increase. Density, setback and vegetation removal controls all relate to impervious surface area, but it is clearer, and probably more effective to regulate buildable lot area directly.

Ordinance Language

Commentary

Calumet County:

“The total square footage, in ground floor area, of all structures (proposed and existing) on any one lot shall not exceed 15% of net lot area for unsewered lots, or 20% for sewerred lots.” Also limits floor area of residence to 720 square feet (excluding garage) and height of principal building to 35 feet.

Calumet, Waupaca and Shawano Counties set absolute limits on the area of disturbance or construction permitted on each lot. Even these limits, however, may be insufficient alone to provide adequate protection.

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Ordinance Language

Commentary

Waupaca County:

"No more than 50% of each shoreland lot, or 25,000 square feet, whichever is less, may be disturbed for residential or commercial construction.

Studies of streams from around the country (see shoreland literature review) suggest that conversion of as little as 10% of a watershed to impervious surfaces can cause serious declines in habitat and water quality.

No more than 25% of each shoreland lot, or 10,000 square feet, whichever is less, may be converted to an impervious surface. "

Shawano County (White Bear Lake Protection District):

"No more than 8% of each lot within 300 feet of the ordinary high-water mark may be covered by impervious surfaces including but not limited to roofs, driveways, patios and decks. "

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5.0 SETBACKS FROM THE WATER.

Building setbacks, cutting restrictions, nonconforming structure regulations and wetland regulations work together to create a buffer area around water bodies. If all these elements are in place, this buffer can provide an effective shield against sediment and nutrient runoff and habitat for aquatic and some riparian wildlife. In addition, the buffer helps preserve natural shoreline beauty while retaining reasonable viewing and access for waterfront owners. The literature review has noted that greater structure setbacks, in combination with revised vegetative cutting standards, would create a more effective shoreline habitat buffer. Greater setbacks would also reduce the likelihood of sediment delivery during construction.

5.1 LOTS THAT ABUT ON NAVIGABLE WATERS

Ordinance Language	Commentary
<p>All buildings and structures, except piers, boat hoists, boathouses and open fences which may require a lesser setback, shall be set back at least 75 feet from the ordinary highwater mark of navigable waters.</p>	<p>This language clarifies that setback measurements should be independent of slope, from the closest point of the structure to the closest point of the OHWM.</p>
<p><u>DNR Recommended Language:</u> <i>“All distances unless otherwise specified should be measured horizontally. The measurement shall be taken from the ordinary high water mark to the closest point of a building or structure, including steps, decks, overhangs, eaves or landings.”</i></p>	
<p>Variations on 75-foot setback that apply generally:</p>	
<p><u>Portage County:</u> <i>100' setback for all structures.</i></p>	<p>According to the literature review, a 100' buffer is optimal for water quality protection, and provides at least minimal habitat protection for shoreline wildlife. Setbacks greater than 100' would benefit riparian wildlife such as eagles, loons and mammals.</p>
<p><u>Waukesha County:</u> <i>“Every structure (except piers, boat hoists, boat houses) shall be set back 75 feet from the OHWM of navigable waters, 100 year flood, or the conservancy-wetland district. . .”</i></p>	<p>The shoreland literature review suggests that adjacent development can also degrade wetlands and floodplains. Setbacks from these features help protect them from sedimentation, excess nutrient flow, and hydrology changes.</p>

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Ordinance Language

Commentary

Variations on 75-foot setback that apply to specifically identified waters:

Shawano County:

Created a White Lake Protection District, within which the following setbacks apply:

- “(a) On lots with a minimum width of at least 300 feet, the minimum shoreline setback from the OHWM for all structures except piers shall be 100 feet.*
- (b) On lots with a minimum width of less than 300 feet, the minimum shoreline setback from the OHWM for all structures except piers shall be 150 feet.”*

Douglas, Florence, Jackson, LaCrosse, St. Croix, Pierce, & Trempealeau Counties:

Require greater setbacks, ranging from 100 to 200 feet, from the OHWM of specifically identified rivers or portions of rivers.

Lower St. Croix Scenic Riverway Model Ordinance/ NR 118:

“The following minimum setbacks from the ordinary highwater mark and bluff line shall apply to all structures and private roads and parking areas, except those specified as exceptions herein:

- 1) In incorporated areas, not less than 100 feet from the ordinary highwater mark and not less than 40 feet from the bluff line, whichever is greater.*
- 2) In unincorporated areas, not less than 200 feet from the ordinary highwater mark and not less than 100 feet from the bluff line, whichever is greater.”*

Pierce, Trempealeau, St. Croix Counties:

Establish setbacks, ranging from 25 to 100 feet, from the bluff line of specifically identified rivers.

Kewaunee County:

Requires a 125 foot setback from the OHWM of Lake Michigan for

Several counties specifically name lakes, streams or rivers deserving of extra protection. This is a straightforward, easily understood way of protecting exceptionally scenic, sensitive or pristine waters without imposing unreasonable restrictions on already-developed areas.

On rivers with steep banks and high bluffs, setbacks measured from the OHWM may not provide adequate protection against sedimentation, erosion, or visual intrusiveness. For example, along the St. Croix Scenic Riverway, NR 118 establishes minimum setbacks from both the OHWM and the bluff line, creating a wider buffer where necessary. See Section 13 for definitions of “bluff line” and “bluff face.”

Pierce and Trempealeau Counties have adopted similar standards for other rivers with steep slopes and highly erodible soils.

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Ordinance Language

Commentary

properties with bluffs taller than 10'.

Sheboygan County (Douglas, Bayfield, Manitowoc, Ozaukee & Racine Counties have similar language):

“Lake Michigan possesses unique ecological characteristics, water level fluctuations, and erosion hazards, not found on other surface waters in Sheboygan County. . .”

“. . . To protect property and life and minimize costly damage, the setback from Lake Michigan shall be based upon the long-term recession rate of two feet per year and a 50 year period as the useful life of a typical residence. In addition, on steep bluffs it shall also be necessary to determine an additional setback distance based upon a stable slope angle of 2 " feet horizontal distance for every one foot vertical distance. [To illustrate, 50 year design life x 2 feet per year recession rate = 100 foot setback. If on a 50 foot high bluff; 2 " feet (stable slope angle) x 50 feet (bluff height) = 125 foot setback. TOTAL SETBACK = 225 feet (100 + 125).]

On the shores of the Great Lakes, some counties replace the “one-size-fits-all” setback with a “custom-tailored” formula. This has the advantage of creating an optimum buffer based on site-specific conditions. Note that a statement about the unique characteristics and hazards associated with Lake Michigan is incorporated directly into the ordinance language. This serves as a finding of fact, making the purposes of this provision clear to landowners, regulators and courts.

This case by case approach is useful for potentially sensitive or hazardous areas, such as areas prone to shore recession, but might be difficult to administer county-wide.

Variations on 75-foot setback that apply to categories of waters:

Washburn County (proposed):

“Greater setbacks may be imposed in specific areas where an additional level of shoreland protection is desired.”

Instead of listing specifically protected bodies of water, a more comprehensive approach is to require greater levels of protection for all waters meeting certain criteria.

Bayfield, Waushara Counties:

Require a 100 foot setback from the OHWM of Class I, II and III trout streams.

The criteria can range from the general (Washburn), to simple, already established classes (Bayfield & Waushara) to full-blown lake classification systems (Waupaca, Sawyer & Douglas).

Waupaca County:

Requires a 125 foot setback from Class I, II and III trout streams and a 100 foot setback from all other rivers and streams.

For a more detailed discussion of lake classification, see Sect. 17.

Barron, Douglas & Waupaca Counties:

Require greater setbacks, ranging from 100 to 300 feet, from the OHWM of lakes meeting specified criteria.

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Commentary

Variations on 75-foot setback that apply to particular uses:

Kenosha County:

Requires a 300 foot setback from the outer edge of the shoreland and floodplain zones for fertilizer production storage, cement or concrete products manufacturing facilities, and petroleum bulk stations and terminals; 1,000 foot setback from shoreland for wrecking, junk, demolition and scrap yards; 2,000 foot setback from shoreland or floodplain for sanitary landfills.

NR 115 established the 75-foot setback to apply primarily to single-family residential development. Other uses, especially industrial and agricultural facilities, could potentially pose a greater risk to water quality, habitat and aesthetics, and so should be set further from the water. The Kenosha ordinance excludes such uses from the entire shoreland area, with the setback measured from the outer edge of the shoreland zone or floodplain.

Brown County:

Requires farm buildings housing animals, barnyards and feed lots to be at least 100 feet from the OWHM of any navigable water body. Such buildings must be located so manure and manure effluents do not drain into navigable water.

Bayfield, Brown and Barron Counties allow intensive uses in the shoreland, but require greater setbacks from the OWHM to provide increased protection.

Bayfield County:

Requires a 200 foot setback from the OWHM for Planned Unit Developments.

Barron County:

Requires a 100 foot setback from the OWHM for farm buildings housing animals, barnyards and feedlots.

5.2 REDUCED BUILDING SETBACKS (SETBACK AVERAGING)

Setback averaging has no ecological merit: it allows encroachment into the shoreline buffer, with impacts on habitat/water quality. Averaging compromises the ability to maintain an effective aesthetic, habitat and water quality buffer. In practice, setback averaging has allowed increased waterward development of not only new structures, but also expansion of nonconforming structures, contrary to the intent of the rule.

Ordinance Language

Commentary

A setback of less than that required by section 5.1 may be permitted by the zoning administrator where there is at least one main building on either side of the applicant's lot, within 200 feet of the proposed site that is built to less than

Structures placed by setback averaging are legal conforming structures, with no limitations on their future expansion within the 75' setback. The rule currently requires no absolute minimum setback.

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Commentary

the required setback. In such case, the setback shall be the average of the setbacks of the nearest main building on each side of the proposed site or, if there is an existing main building on only one side, the setback shall be the average of the existing building's setback and the required setback. Any other setback reduction may be permitted by the board of adjustment pursuant to section 10.5 of this ordinance.

DNR Recommended Language:

“Structures that were placed because they required water access (mill buildings) or were allowed by right (boathouses) cannot be used in calculation of reduced building setback.”

Sheboygan County:

Excludes buildings at a reduced setback permitted by variance from the averaging calculation.

Green Lake, Rusk, St. Croix, Washburn & Sawyer Counties:

Setback averaging is not allowed. All new structures must meet the 75 foot setback.

Waushara County:

Setback averaging eliminated for Class I, II, and III trout streams.

Portage, Langlade, Calumet, Chippewa, Kenosha, Racine, Vilas, Waupaca, Winnebago, Ashland, Bayfield, Burnett, Door, Iron, Jackson, Kewaunee, Lincoln, Oneida, Polk, Walworth, Sheboygan, Waushara & Waukesha Counties:

Setback averaging is allowed, but no structure is permitted to be closer than a minimum distance, ranging from 25 to 65 feet from the OHWM.

Manitowoc County:

Allows setback averaging only through a conditional use permit.

Setback averaging, if allowed, should be for principal structures only. Setback averaging for accessory structures is not appropriate since prohibiting them is not likely to cause a hardship or prevent a property owner from making reasonable use of the property.

Since they reflect unique characteristics of individual lots, buildings with a variance for a reduced setback should not be used to justify setback averaging.

Eliminating setback averaging provides the highest level of resource protection. However, in already developed areas, outright elimination of averaging may create many nonconforming structures.

Trout streams are particularly vulnerable to sedimentation, runoff and temperature fluctuations caused by the loss of shore cover associated with encroaching buildings.

Enforcement of an absolute minimum setback guarantees at least minimal resource protection while recognizing the reality of existing development norms. Even greater protection could be achieved, however, if reduced setbacks were tied to mitigation of the existing buffer, such as re-establishment of natural vegetation or removal of non-conforming accessory buildings (See Section 9.0 Nonconforming Uses for further discussion of this idea.)

Requiring a conditional use permit not only raises the standard of review, but also allows for the possibility of mitigation as a condition of building at a reduced setback. Listing standard permit conditions in the ordinance and allowing for stipulated permits can streamline the process by allowing the

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Ordinance Language

Commentary

*Clark, Dodge, Pierce & Jefferson Counties:
Uses 5 buildings within 500 feet in averaging calculation.*

zoning administrator to process routine requests. The zoning committee or board of adjustments can still review difficult, contested or controversial proposals.

This approach does a better job of capturing the idea of an “existing pattern of development” than does the model language, which depends on only two measurements.

*Marathon County:
Excludes buildings closer than 25 feet to the OHWM from the averaging calculation.*

Marathon County’s ordinance effectively establishes a minimum setback by eliminating the most noncompliant structures from consideration. Increasing this cutoff to a higher number, such as 50 feet, would offer greater protection.

5.3 BOATHOUSES.

The longstanding exemption from the setback requirement for boathouses does not make sense ecologically, as it allows for further fragmentation and disturbance of habitat. Large roofed areas on these structures increase runoff and reduce infiltration into the soil.

Many boathouses are not used for storing boats (violating the ordinance), but have become a way of legally building a structure on the immediate shoreline. The original justification for allowing boathouses, to protect wooden boats from the weather, is not as persuasive for aluminum and fiberglass boats. In some cases, landowners have used boathouse exemptions to get around restrictions on decks.

Ordinance Language

Commentary

5.31 Boathouses shall be designed and constructed solely for the storage of boats and related equipment and shall not be used for human habitation.

NR 115 permits boathouses near the water because it is presumably impractical to store water-related equipment far from the shore. This logic does not apply to other types of equipment, such as tools or yard care supplies.

5.32 Boathouses shall not be placed waterward beyond the ordinary highwater mark

As a practical manner, it is often difficult to determine without an inspection warrant, how a particular boathouse is used.

5.33 One boathouse is permitted on a lot as an accessory structure.

5.34 Boathouses shall not be constructed where the existing slope is more than 20%.

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Commentary

5.35 Boathouses shall be set back a minimum_ feet from the ordinary highwater mark and shall be constructed in conformity with local floodplain zoning standards.

Marathon, Washburn, Counties:

Boathouses must be set back 75' from OHWM

Marinette County:

Boathouses must be set back 20' from OHWM

5.36 Boathouses shall not exceed one story and ___ square feet in floor area.

Calumet County:

“Only 1 boathouse shall be permitted per lot. Boathouses shall not exceed 10 feet in height measured from floor to top of roof, and shall not exceed 500 square feet in area.”

DNR Recommended Language:

Boathouses shall meet the following design limitations:

- a) *On lakes under 1000 acres in size, the outside dimensions of a boathouse shall not exceed 12 feet in width or 24 feet in length.*
- b) *On lakes 1000 acres in size or more, the outside dimensions of a boathouse shall not exceed 14 feet wide or 24 feet in length.*
- c) *The roof of any boathouse shall be pitched not less than 1 foot, nor more than 2.5 feet from the roof peak to the bottom of the eaves.*

By holding boathouses to the same standard required of any other building, the Marathon and Washburn County ordinances provide the greatest level of resource protection

Setting a 20' setback for boathouses, as Marinette County does, relieves some visual impact, while still providing some accommodation for boat storage. The scientific literature suggests, however, that a 20' buffer would offer only limited habitat or runoff protection.

If boathouses are permitted, limits on their size and number reduce the potential impact, and help ensure that boathouses are used strictly for the storage of boating equipment.

However, even boathouses 500 square feet in area could compromise the function of the buffer, and are probably larger than necessary for most current equipment.

The DNR suggestion is consistent with the standards used in NR 326 (Piers and Boat Shelters in Navigable Waterways). This would have the advantage of applying the same standards above and below the OHWM.

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5.4 (new) STAIRWAYS, WALKWAYS AND LIFTS.

On properties with steep, erodible banks, or with wetlands completely covering the shore, the construction of a stairway or walkway may be necessary to provide access to the water. When properly placed and designed, such structures should be permitted within the 75-foot setback. See also Section 5.5, dealing with accommodations for disabled persons.

Ordinance Language

Commentary

DNR Recommended Language:

“The Zoning Administrator may permit a stairway, walkway or lift in the shoreland setback area only when it is essential to provide pedestrian access to a legally permitted pier, boat hoist or boathouse because of steep slopes, rocky or wet, unstable soils, and when the following conditions are met:

(1) There are no other locations or facilities on the property which allow adequate access to a pier, boat hoist or boathouse. Only one stairway or one lift is allowed, not both, except where there is an existing stairway and the lift will be mounted to or is immediately adjacent to the existing stairway.

(2) Such structures shall be placed on the most visually inconspicuous route to the shoreline and shall avoid environmentally sensitive areas.

(3) Vegetation which stabilizes slopes or screens structural development from view shall not be removed.

(4) Structures shall be colored and screened by native, non-invasive vegetation so as to be inconspicuous when viewed against the shoreline.

(5) Canopies, roofs and sides are prohibited. Open railings may be provided where required for safety.

(6) A maximum width of four (4) feet (outside dimensions) is allowed for stairways, walkways and lifts.

Conditions on size, color and design help make sure stairways, walkways and lifts are used only to provide pedestrian access, and not as de facto decks or porches.

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Ordinance Language

Commentary

(7) Landings are allowed where required for safety purposes and shall not exceed 40 square feet. Attached benches, seats, tables, etc. are prohibited.

(8) Stairways, walkways and lifts shall be supported on piles or footings. Any filling, grading or excavation that is proposed must meet the requirements of section __ of this ordinance.

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5.5 (new) ACCOMMODATIONS FOR DISABLED PERSONS

In limited situations, compliance with the Americans With Disabilities Act (ADA), Federal Fair Housing Act (FHAA) and Wisconsin Fair Housing Act (WFHA) would require encroachment into the 75' setback to accommodate disabled persons (such as for the construction of a wheelchair ramp). Legal variance requirements for determining "hardship" present difficulties for disabled persons who require structural modifications. When a hardship is personal to the applicant rather than the physical features of the property, it does not meet the "unnecessary hardship" test in statute and case law.

A variance should not be issued to anyone, including a person with a disability, unless there are special conditions unique to the property that would justify a variance even if the applicant were not disabled, and a special exception or conditional use permit should not be issued to anyone, including a person with a disability, unless all of the requirements listed in the ordinance for a special exception or conditional use permit are met. See Section 13 for a definition of "disabled person." See also Section 5.4, dealing with stairways, walkways and lifts.

<u>Ordinance Language</u>	<u>Commentary</u>
<p><i><u>DNR Recommended Language:</u></i> <i>"Where strict interpretation of this ordinance would effectively deny disabled persons equal housing opportunity, and where the property does not meet the criteria for a variance under Sections ___ and ___ of this ordinance, the Zoning Committee [Board of Adjustment] may grant a Special Exception Permit to provide reasonable accommodations as required by the Federal Americans with Disabilities Act, the Federal Fair Housing Act and the Wisconsin Fair Housing Act. The permit shall be subject to the following conditions:</i></p>	<p>By using a special exception or conditional use process instead of a variance, the Zoning Committee or Board of Adjustment is not bound by the "unnecessary hardship" test.</p> <p>An alternative to having the Board of Adjustment or Planning and Zoning Committee hear requests for special exception or conditional use permits would be to allow the zoning administrator to process these applications as land use permits. The zoning administrator's decision, as is true for any ordinance interpretation issue, can be appealed to the BOA.</p>
<p><i>a) Only the minimum relaxation of dimensional, density or other standards needed to provide reasonable accommodation shall be approved.</i></p>	<p>For further information on accommodations for people with disabilities, including detailed minimum construction standards, refer to the <i>ADA Accessibility Guidelines (ADAAG)</i>, published by the U.S. Architectural & Transportation Barriers Compliance Board (Access Board).</p>
<p><i>b) No use, structure or other relaxation of standards shall be approved that would violate or undermine the stated purposes of this ordinance.</i></p>	<p>The FFHA, WFHA or ADA do not require local officials to grant permits for decks, patios, gazebos, walkways, etc. unless the applicant can show that such structures are required by the disabled person to afford them housing opportunities that are equal to those housing opportunities enjoyed by non-disabled persons. This means, in our opinion, that the disabled person would have to demonstrate that they need a deck, patio or walkway of a certain size to allow them to enter or exit the buildings on the property or to gain access to a</p>

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Ordinance Language

Commentary

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| c) <i>The Special Exception Permit will expire once the property is no longer primarily used by a disabled person. Subsequent landowners shall be responsible for the removal of any nonconforming structures no longer required by a disabled resident.</i> | pier or wharf. If permission to construct a deck, patio or walkway, in a location that would otherwise not be allowed, is requested by someone with a disability, the applicant would have to show that a deck, patio or walkway with smaller dimensions would not be adequate to allow the disabled person access to the building, pier or wharf.

This allows the Board to require restoration of the structure once non-conforming modifications are no longer needed by a disabled person. |
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6.0 REMOVAL OF SHORE COVER

An undisturbed shoreline buffer provides many functions critical to fish and wildlife, if implemented effectively. Vegetated shorelines stabilize stream banks, preventing sediment from covering gravelly spawning grounds. Forested waterfronts provide the shading that helps regulate water temperatures, preventing the temperature extremes that damage fish and other aquatic life. Leaf-fall into streams and lakes provides an essential component of aquatic food-chains, and fallen trees provide habitat structure for fish, amphibians, reptiles and fish-eating birds. Dead and dying trees along the shoreline provide dens for mammals and nesting sites for cavity nesting birds. Decaying logs provide support insect prey and provide cover for amphibians and reptiles.

The scientific literature review suggests that, for water quality and wildlife habitat, the quality of the shoreland buffer is at least as important as its size. The current code's vegetative cutting standard does not put enough emphasis on preserving shoreline habitat, and could be interpreted to allow almost total removal of natural vegetation. Drastic vegetative alteration, such as complete conversion to a manicured lawn underneath a few trees, can reduce the buffer's effectiveness to near zero for wildlife habitat and reduce the natural appearance of the shoreline.

Ordinance Language

Commentary

6.1 PURPOSE

The purpose of tree and shrubbery cutting regulations applicable to the shoreland area is to protect scenic beauty, control erosion and reduce effluent and nutrient flow from the shoreland. The provisions shall not apply to the removal of dead, diseased or dying trees or shrubbery at the discretion of the landowner, or to silvicultural thinning upon recommendation of a forester.

DNR Recommended Language:

Include "protect aquatic and shoreline wildlife habitat" in the list of purposes.

"Trees and shrubbery" do not convey the idea of a shoreline buffer or the ecological value of the riparian zone.

Allowing the removal of "dead, diseased and dying trees" creates a loophole by providing an "after the fact" justification that is impossible to verify.

Natural vegetation, especially woody cover, in the area closest to the water is crucial for fish and riparian wildlife. Elsewhere, the model acknowledges protection of habitat, but ignores it in this section.

6.2 SHORELINE CUTTING

Tree and shrubbery cutting in an area parallel to the ordinary highwater mark, and extending 35 feet inland from all points along the ordinary highwater mark, shall be limited in accordance with the following provisions:

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Ordinance Language

Commentary

6.21 No more than 30 feet in any 100 feet, as measured along the ordinary highwater mark, may be clear cut to the depth of the 35 foot area.

The “30 in any 100” language results in fragmentation of shoreline habitat. In addition, the current standard is difficult to understand, and can cross lot lines. A standard that applies to each lot would be easier to enforce and administer.

6.22 Natural shrubbery shall be preserved as far as practicable and, where removed, it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.

Waupaca County (slightly reworded):

“6. VEGETATION PROTECTION AREA. On each lot, in an area bounded by ordinary highwater mark and a line which is 25 feet less than the shoreline setback (see Section __) or 35 feet from the ordinary highwater mark, whichever is greater, land disturbing activities and vegetation removal are prohibited with these exceptions:

By listing only those activities permitted in the 35-foot zone and prohibiting everything else, Waupaca County’s ordinance closes several loopholes left open by the model ordinance. This language clearly prohibits drastic vegetation removal that might fall just short of the model’s “clear-cut” standard.

a) *Pier and wharf construction confined to the view corridor described in paragraph (e) below.*

b) *Pedestrian access to the shoreline confined to the view corridor described in paragraph (e) below. Access may include an elevated walkway if:*

Conditional exceptions for stairways and walkways ensure appropriate riparian access without undermining the purposes of the ordinance.

1) *it is essential to access the shore because of steep slopes or wet soils;*

2) *it is the minimum construction necessary to provide access;*

3) *it is no more than 3 feet wide; and*

4) *it includes no additional construction other than railings essential for safety.*

c) *Shoreline protection authorized by a state permit and erosion control measures designed to remedy significant, existing erosion problems.*

d) *Removal of dead, diseased or dying trees which are a safety hazard.* Only permitting removal of safety hazards allows for at least some snags for wildlife and other ecological considerations.

e) *Establishment of a single view corridor on each lot containing a principal structure by selective pruning and removal of trees and*

Limiting clearing to a single 30-foot corridor per lot provides a more easily administered and understandable standard than the “30 feet in any 100”

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shrubbery. Clear cutting, filling, grading and other land disturbing activities are not permitted. Sufficient trees and shrubbery shall be retained to screen development from view from the water. The corridor shall be no more than 30 feet wide in the dimension paralleling the shore.”

Vilas County:

“...the property owner may remove the trees and shrubbery within an area paralleling the shoreline measuring 30 feet wide by 35 feet in depth from the shoreline, for construction of a boathouse or for recreational activities. Trees, shrubbery, undergrowth and groundcover on the remainder of the property must not be disturbed. Clear cutting of shoreland cover on any property is strictly prohibited, except as provided (below.)”

“The removal of trees, shrubbery, undergrowth, and other ground cover is strictly prohibited other than for necessary clearing for the placement of a building with a basement or crawl space, using the exact dimensions of the exterior walls plus thirty feet, or if a concrete slab, plus fifteen feet, installation of a private septic system, a 20 foot wide roadway from a public road or easement to the rear of the principal structure and the 30 by 35-foot cutting described (above.)”

Washburn County (proposed):

“The application of (shoreland cutting) regulations shall allow the removal of dead, diseased or dying trees outside the area within 35 feet of the OHWM. Within 35 feet of the OHWM, such trees may be removed only when they pose a hazard. Such trees provide habitat for cavity nesting species of birds and also provide benefits for other wildlife.

Tree and shrubbery cutting removal in a buffer strip paralleling the shoreline and extending 75 feet from all points along the OHWM shall be limited in accordance with the following provisions:

- 1.) *Within the first 35 feet of the OHWM, no shore cover shall be removed, except one 30 foot wide access corridor. Within the*

Commentary

language. This language would prohibit a landowner with more than 100 feet of frontage from clearing two or more areas, providing a more contiguous buffer and lessening habitat fragmentation.

A few counties have adopted, or are considering, amendments to more precisely define activities permitted or prohibited in the near-shore area. The model lists the cutting of “trees and shrubbery” as regulated activities; Vilas County adds “undergrowth and ground cover” to the list, making it clear that all vegetation, not just woody plants, should remain undisturbed.

The Vilas ordinance allows specified, clearly-defined cutting areas for water access, recreation, housing and septic system construction. These standards are clear and based on criteria that are readily observable in the field, aiding enforcement.

The prohibition in the model ordinance against “clear-cutting” could be interpreted to allow the cutting of all but a single tree. Washburn County’s proposed language sets explicit percentages of allowable vegetation removal to make the intention clear.

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Commentary

defined access corridor, up to 50% of shore cover may be removed, but the corridor shall not be clear cut.

2.) *Within the area extending from 35 feet from the OHWM to 75 feet from the OHWM, no more than 30% of the shore cover shall be cut or removed*

3.) *Provided further, that cutting the 30% shall not produce a clear cut or open space in excess of 30 feet in width.*

4.) *The cutting and removal of natural shrubbery within the buffer strip area shall be as minimal as practicable in order to retard runoff, prevent erosion and pollution, provide shading and preserve the natural beauty and character of the shoreline. When shore cover vegetation is planted within the buffer strip, native species are to be emphasized.”*

Brown County:

Requires a minimum of 35 feet of land adjacent to navigable streams to be free of row crops and seeded to grass, alfalfa or other close-growing crop. Exceptions to this requirement are allowed if the Land Conservation Department determines that soil and water conservation practices are sufficient and no pollution is occurring on the site.

Kenosha, Barron, Waupaca, Langlade, Marinette, Outagamie, Menominee & Sheboygan Counties:

Apply shoreline cutting restrictions to expanded areas, ranging from 50 feet to 100 feet from the OHWM of all navigable waters.

Jackson County:

Allows clear cut of no more than 20 feet in any 100 feet.

Langlade & Marinette Counties:

Native plants are more effective at providing habitat and retarding runoff, require less pesticidal or herbicidal treatment and are less likely to become nuisance weeds than introduced varieties.

NR 115 cutting restrictions technically apply to agricultural lands, but are difficult to enforce in areas cleared of “trees and shrubbery” for generations. Brown County addresses farm uses in the shoreland zone by requiring clearly-defined buffers or filter strips along navigable waters. Buffer strips of closely growing grass are an effective means of reducing pollution and sediment loads in agricultural streams.

Several counties expand the no-cut area, or further restrict the size of the permitted view/access corridor. The 35-foot buffer created by NR 115 falls within the lower to middle range of what the literature recommends for the purposes of sediment trapping and nutrient retention to prevent water pollution.

Water quality benefits from sediment and nutrient trapping will generally increase with buffer widths up to around 100 feet, before reaching a point of diminishing returns. Provisions for natural vegetation beyond 100 feet provide primarily habitat and scenic benefits. Individual site conditions of soil, slope, vegetation type and adjacent land use will all affect the effective distance of a buffer.

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Commentary

No single clear-cut strip may exceed 10 feet in width.

Jackson, La Crosse Counties:

Allow clear cut of no more than 30 feet in any 200 feet along the Black River.

Special value waters, such as scenic areas or trout streams, can benefit from expanded vegetated buffer protection.

Waushara County:

35-foot strip from the OHWM where clearcutting regulation is in effect is expanded to 60 feet in shorelands adjacent to Class I, II, and III trout streams.

Florence County:

Requires all structures to be 75% screened by vegetation in Wild River Zone. (See also Section 17: Lake Classification)

This language sets a clear, measurable performance standard that would apply to either vegetative removal or to new plantings/restorations. In practice, administrators could use discretion to determine compliance with the 75% screening standard. For a more precise method, administrators could overlay a photograph taken from the vantage point of the water with a dot matrix to assess percentages of screening.

Marathon County:

"In the remaining 70 feet of the 100 foot strip (in the first 35 feet from the OHWM), cutting shall leave sufficient trees and other vegetative cover to:

- a. screen uses on the landward side of the strip as seen from the water.*
- b. maintain shore or channel bank stabilization.*
- c. retard the flow of pollutants from shorelands.*
- d. protect aesthetic values."*

Marathon County sets an expanded list of performance standards for vegetation in the buffer zone, adding aesthetic and specific pollution and erosion control considerations.

Walworth County:

Allows cutting of vegetation only as part of an approved conservation plan.

6.3 PATHS

Any path, road or passage within the 35 foot area shall be constructed and surfaced so as to effectively control erosion.

DNR Recommended Language:

Improperly designed roadways can contribute to sedimentation, channelized

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Commentary

“Roads, paths or passages shall be constructed and planned in accordance with the current version of Wisconsin’s Forestry Best Management Practices for Water Quality. Any path, road or passage must be placed within the 30 foot view/access corridor.”

flow and erosion. The forestry best management practices manual includes specific techniques to minimize these effects based on local soil, slope and environmental conditions. This provision also clarifies that roads and paths are not exempt from cutting restrictions.

6.4 CUTTING PLAN

As an alternative to section 6.2, a special cutting plan allowing greater cutting may be permitted by the board of adjustment by issuance of a special exception permit, pursuant to section 10.4. An application for such a permit shall include a sketch of the lot providing the following information: location of parking, topography of the land, existing vegetation, proposed cutting, and proposed replanting. The board may grant such a permit only if it finds that such special cutting plans:

- (a) Will not cause undue erosion or destruction of scenic beauty, and
- (b) Will provide substantial visual screening from the water of dwellings, accessory structures and parking areas. Where the plan calls for replacement plantings, the board may require the submission of a bond which guarantees the performance of the planned tree or shrubbery replacement by the lot owner.

DNR Recommended Language:

“(c) Cutting plans shall follow the practices described in the Forestry Best Management Practices for Water Quality manual.”

Incorporates Best Management Practices into cutting plans by reference and highlights the availability of the BMP manual.

Marathon County:

“(d) slash materials shall be disposed of in accordance with ss. 26.12(6) and (7), Wis. Stats.”

Excessive amounts of artificially cut vegetation could add to nutrient loading or pose a flood hazard. It is important to distinguish, however, between slash material and naturally downed trees and branches, which are beneficial to aquatic and near-shore habitat.

DNR Recommended Language:

“(d)(con) Slash materials shall be disposed of in accordance with the County Floodplain Ordinance.”

Some fish and wildlife managers recommend the use of brush piles to provide fish, reptile and amphibian habitat. These, too should be exempted from any restrictions on slash disposal, as long as they do not pose a hazard. See Section

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Ordinance Language

Rusk County:

“6.5 PLANTING PLAN. To reinstate the shoreland cover described in this section in areas where it has previously been removed, Rusk County recommends a planting plan that may be obtained from the Land Conservation Department prior to the issuance of any land use or sanitary permit by the Rusk County Zoning Department.”

Commentary

13 for a definition of slash materials.

The model ordinance offers little guidance on attempts to restore natural vegetation in an already-disturbed buffer. The example from Rusk County draws on Land Conservation expertise to develop an appropriate plan.

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7.0 FILLING, GRADING, LAGOONING, DREDGING, DITCHING AND EXCAVATING

Sediment delivery from construction site erosion can be a major source of nonpoint pollution. Given the soil disturbance and runoff conditions that often develop on construction sites (channelized flow through bare soil) the buffer provided by shoreland zoning setbacks is not adequate by itself to prevent serious sediment delivery to lakes, streams and wetlands. On steep slopes, the chances of achieving good sediment control are greatly reduced. Construction sites without adequate erosion and sediment control practices can have very high rates of soil loss, from 30 to 200 tons/acre/year, 10 to 20 times that of cropland. In 1981 the Southeastern Wisconsin Regional Planning Commission estimated that runoff from urban and suburban construction sites contributed 35% of the sediment and 28% of the phosphorus entering the inland lakes and streams in its seven-county planning area.

7.1 GENERAL STANDARDS

The model ordinance language is general and vague, with no specific provisions to guarantee that erosion control measures will be sufficient to protect water quality and habitat.

Ordinance Language

Commentary

Filling, grading, lagooning, dredging, ditching or excavating which does not require a permit under section 7.2 may be permitted in the shoreland area provided that:

7.11 It is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.

7.12 Filling, grading, lagooning, dredging, ditching or excavating in a shoreland-wetland district meets the requirements of sections 8.32 and 8.33 of this ordinance.

7.13 All applicable federal, state and local authority is obtained in addition to a permit under this ordinance.

7.14 Any fill placed in the shoreland area is protected against erosion by the use of riprap, vegetative cover or a bulkhead.

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7.2 PERMIT REQUIRED

The model requires permits for grading or filling under only a limited set of circumstances. Without proper controls, even small projects can contribute to erosion and sedimentation. Permit approval depends on Zoning Committee or Board of Adjustment review, through the conditional use process, causing delays. In many cases, local officials do not have the technical expertise to critically evaluate these applications. As long as standards are clear and competent staff are available, zoning or land conservation department review is usually sufficient.

Ordinance Language	Commentary
Except as provided in section 7.3, a special exception permit is required:	
7.21 For any filling or grading of any area which is within 300 feet landward of the ordinary highwater mark of navigable water and which has surface drainage toward the water and on which there is either:	
<ol style="list-style-type: none">(1) Any filling or grading on slopes of more than 20%.(2) Filling or grading of more than 1,000 sq. ft. on slopes of 12%-20%.(3) Filling or grading of more than 2,000 sq. ft. on slopes less than 12%.	
<u>Brown County:</u> <i>Requires a special exception permit for any filling or grading on the bed of a navigable body of water.</i>	As authorized by s. 281.31 (1), some counties have chosen to regulate filling or grading activities below the OHWM. (See also Section 15: Regulation Below the OHWM.) Any permits required by the county are in addition to, not in place of, state permits required by s. 30.12.
<u>Dane County:</u> <i>Requires an erosion control plan for any grading or filling over 4,000 square feet or on slopes greater than 12% throughout the county. Plans are reviewed by both the Zoning Administrator and County Conservationist, according to NRCS guidelines. Specific provisions for erosion control plans include the following:</i>	Careful planning, proper use of erosion and sediment control practices and inspections can reduce sediment delivery from construction sites. Through its stand-alone ordinance, Dane County requires detailed sediment and erosion control plans for construction throughout the county. References to NRCS guidelines, standard plan information and review by Land Conservation staff make sure plans are complete, accurate and well suited to the site and type of project.
<ol style="list-style-type: none">“1) cross sections of road ditches;2) profiles within road ditches;3) culvert sizes;4) direction of flow of runoff;5) watershed size for each drainage area;	

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Commentary

- 6) *design discharge for ditches and structural measures;*
- 7) *runoff velocities;*
- 8) *fertilizer and seeding rates and recommendations;*
- 9) *time schedules for stabilization of ditches and slopes;*
- 10) *plans shall adhere to the following minimum standards:*
 - a) *proposed design, suggested location and phased implementation of effective, practicable erosion control measures for acceptable plans shall prevent gully erosion and limit total off-site permissible aggregate soil loss for exposed areas resulting from sheet and rill erosion to an annual, cumulative rate not to exceed 15 tons per acre per year and where sites are located adjacent to or directly drain into sensitive areas, the annual cumulative rate shall not exceed 7.5 tons per acre per year.*
 - b) *plan compliance under subs. (a) shall be determined using the soil conservation service Technical Guide or another commonly accepted soil erosion control methodology approved by the county conservationist which includes the following considerations: season of year, site characteristics; soil erodibility; and, slope; and,*
 - c) *erosion control measures for plan approval need not attempt to regulate soil transportation within the boundaries of the applicant's site;*
- 11) *description of methods by which sites are to be developed;*
- 12) *provision for sequential steps mitigating erosive effect of land disturbing activities to be followed in appropriate order and in a manner consistent with accepted erosion control methodology suitable to proposed sites and amenable to prompt re-vegetation;*
- 13) *provisions to ensure no increase in surface water drainage from sites during or after construction, unless water is discharged into existing, adequate stormwater management controls such as outlet control structures or basins necessary to comply with maximum permitted discharges;*
- 14) *provisions to prevent mud-tracking off-site onto public thoroughfares during construction period; and,*
- 15) *any proposed modifications to approved plans or alterations to accepted sequencing of land disturbing site activities shall be approved by county zoning prior to implementation of said changes.*

These detailed performance standards contained in the Dane County ordinance are intended primarily for large-scale, commercial or industrial developments, where the services of an engineer are likely to be available. For smaller projects, standardized simplified project checklists are used (see description on the following page).

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Ordinance Language

Commentary

SIMPLIFIED PLAN CHECKLIST

Applicants may submit erosion control proposals using simplified checklists of standard erosion control practices to be installed on sites, on a standard form approved by Dane County, wherever the following conditions exist: the site is not more than 20,000 square feet in area; the site is not adjacent to and does not directly drain into any sensitive areas nearby; and, there is a slope of less than 6% throughout the site.”

Kenosha, Iron, Racine, Vilas, Waukesha, Winnebago, Portage, Marathon & Barron Counties:
Shoreland alteration or conditional use permit is required for ANY filling or grading in the shoreland area.

Waupaca & Waushara Counties:
Requires a conditional use permit for grading or filling within 300 feet of the OHWM.

Rock, Bayfield, Menominee, Sawyer & Price Counties:
Require either a conditional use or land-use permit for filling / grading over specified areas, ranging from 1,000 to 10,000 square feet, in the shoreland area. Many require standard erosion control plan and/or consultation with Land Conservation Department as well.

7.22 For any construction or dredging commenced on any artificial waterway, canal, ditch, lagoon, pond, lake or similar waterway which is within 300 feet landward of the ordinary highwater mark of a navigable body of water or where the purpose is the ultimate connection with a navigable body of water.

Simplified plan checklists let routine projects go forward without unnecessary delay, while still making sure adequate erosion protections are in place. These guidelines should be sufficient for most small-scale residential development.

The model requires permits for grading or filling under only a limited set of circumstances. Without proper controls, even small projects can contribute to erosion and sedimentation. Several counties address this by regulating a wider variety of land disturbing activities than required by NR 115 or apply standards to the entire shoreland zone, instead of just the first 300 feet, as suggested by the DNR model.

Several counties have either formal or informal arrangements with other agencies, typically the County Land Conservation Department, to review erosion control plans. This helps ensure a thorough and competent analysis. Replacing the conditional use permit with an administrative permit eliminates the need to schedule public hearings for what is primarily a technical review. If County staff has adequate expertise to make recommendations on erosion control measures, review by the Zoning Committee or Board of Adjustment is usually not necessary.

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7.3 SOIL CONSERVATION PRACTICES AND AGRICULTURAL DRAINAGE MAINTENANCE.

Ordinance Language

Commentary

7.31 Soil conservation practices such as tiled terraces, runoff diversions and grassed waterways used for erosion control shall not require a permit under section 7.2 when designed and constructed to Soil Conservation Service technical standards.

DNR Recommended Language:

Change references to “Soil Conservation Service” to “Natural Resources Conservation Service.”

Change reflects federal agency name change.

7.32 The maintenance of existing agricultural drainage systems shall be permitted in conformity with the following construction standards:

- (1) The maintenance dredging of farm drainage ditches is limited to reestablishing the original ditch cross section unless a special exception permit under section 7.22 is obtained.
- (2) Ditch banks shall be constructed at a slope of 2 horizontal to 1 vertical (50% grade) or flatter.
- (3) Ditch banks shall be maintained in a sod cover and free of woody vegetation.
- 4) A 10 foot wide buffer strip of untilled, ungrazed sod cover shall be maintained adjacent to the ditch bank.

Brown County:

If a pollution problem in a navigable stream results from the grazing or pasturing of livestock, requires the farmer or operator to erect a fence no closer than 16 ~ feet from the OHWM. Other abatement techniques are allowed if approved by the County Land Conservation Department.

Uncontrolled livestock access to waterways can lead to severe erosion, sedimentation and nitrogen loading in agrarian areas. This language authorizes county staff to enforce fencing standards to correct livestock pollution problems. Brown County’s ordinance retains enough flexibility to apply other livestock management practices, such as rotational grazing, where appropriate.

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7.4 PERMIT CONDITIONS

Ordinance Language	Commentary
<p>In granting a special exception permit under section 7.2, the board of adjustment shall attach the following conditions, where appropriate, in addition to those provisions specified in sections 10.42 and 10.43</p>	<p>Other conditions that may be appropriate to attach to special exception and other permits can be found in the <i>Construction Site Erosion Control Handbook</i>.</p>
<p>7.41 The smallest amount of bare ground shall be exposed for as short a time as feasible.</p>	
<p>7.42 Temporary ground cover (such as mulch or jute netting) shall be used and permanent vegetative cover shall be established.</p>	
<p>7.43 Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.</p>	
<p>7.44 Lagoons shall be constructed to avoid fish trap conditions.</p>	
<p>7.45 Fill shall be stabilized according to accepted engineering standards.</p>	
<p>7.46 Filling shall comply with any local floodplain zoning ordinance and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.</p>	
<p>7.47 Channels or artificial watercourses shall be constructed with side slopes of two (2) units horizontal distance to one (1) unit vertical or flatter which shall be promptly vegetated, unless bulkheads or riprap are provided.</p>	

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8.0 SHORELAND-WETLAND DISTRICT.

Regulators have traditionally stressed the valuable services wetlands perform for downstream waters, including nutrient uptake, sediment trapping, pollution reduction and floodwater storage. However, wetlands are also valuable for their own sake, as sources of plant diversity, as habitat for a wide variety of fish, animals, birds and insects and for their own natural beauty. Wetlands are vulnerable to the same processes of degradation that affect lakes and streams. Overemphasis of “utility” functions, such as retaining stormwater, can damage a wetland’s “intrinsic” functions, such as providing habitat for fish and waterfowl.

Although counties cannot, by rule, regulate wetland uses more stringently than NR 115 does, they can vary other standards to promote greater wetland protection. Counties may, for example, expand their jurisdiction to include very small wetlands or wetlands outside the shoreland area, regulate building placement or land use in areas near wetlands, or control the flow of stormwater into wetlands.

8.1 DESIGNATION

Wetland water quality, wildlife and aesthetic functions are more dependent on factors of landscape position, land use context and surrounding habitat than size. Wetlands smaller than 2 acres can play critical roles, both individually and cumulatively, in protecting water quality, and providing wildlife habitat and natural beauty. Any size limitation should be based on the feasibility of field delineation, rather than a notion that functions are insignificant below a certain size.

Ordinance Language

This district shall include all shorelands within the jurisdiction of this ordinance which are wetlands of 5 acres or more, (excluding point symbols) and which are shown on the Wisconsin Wetland Inventory maps that are adopted and made a part of this ordinance. A portion of a wetland which is less than 5 acres in size, and which is located in the unincorporated shoreland area within the county, shall be included in the shoreland-wetland district where the wetland as a whole is 5 acres or larger, but extends across the corporate limits of a municipality, across the county boundary or across the shoreland limits, so that the wetland is not regulated in its entirety by the county.

Size of wetlands regulated:

Chippewa, Jefferson, Marinette, Oconto & Waupaca Counties:
All wetlands 2 acres and larger within the shoreland zone are regulated.

Commentary

The current version of NR 115 requires Counties to regulate all shoreland-wetlands, regardless of size, depicted on Wisconsin Wetland Inventory maps. Updated Inventory maps show all wetlands larger than 2 acres (some counties have not yet received updated maps). The model ordinance, which requires regulation of only wetlands 5 acres or larger, is inconsistent with NR 115.

These counties have modified their ordinance to regulate shoreland wetlands 2 acres in size or larger, which is consistent with current Wisconsin Wetland Inventory mapping standards. Smaller wetlands, particularly in the shoreland area, have significant ecological value and deserve protection. Although this language is more restrictive than the model ordinance, it is still inconsistent with NR 115 because it regulates only wetlands over a certain size. If the

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Ordinance Language

Commentary

Wood County (Adams, Barron, Burnett, Dodge, Juneau, Menominee, Outagamie, Polk, Rock, Sheboygan, Vilas, Walworth, Washburn, Waukesha, Door & Kenosha Counties have similar language):
“(The shoreland-wetland) district includes all shorelands within the jurisdiction of this ordinance designated as wetlands on the Wetland Inventory Maps which are hereby adopted and made part of this Ordinance and are on file in the _____ County Planning & Zoning Office.”

intent is to regulate all mapped wetlands, as NR 115 language would suggest, then the ordinance text would have to be amended to meet any future changes in Wetland Inventory mapping standards.

Seventeen counties regulate all mapped wetlands in the shoreland zone, regardless of size. Unlike the example above, this language is consistent with NR 115. If Wetland Inventory mapping standards are ever reduced below two acres, this wording would allow counties to regulate mapped wetlands automatically upon map adoption, without requiring a separate ordinance text amendment.

Regulation of wetlands outside shoreland areas:

Dane County:

(a) The shoreland-wetland district shall include all shorelands which are designated as wetlands of two acres or more in area on the Wisconsin Wetland Inventory Maps of 1986 (or subsequent appropriate year) applicable to Dane County.

(b) The inland-wetland district shall include all non-shoreland wetlands, as shown on the Wisconsin Wetland Inventory Maps, which are two acres or more in area and located in unincorporated territory of Dane County.

The Dane and Waupaca examples offer varying degrees of wetland protection outside the shoreland area. Dane County regulates both shoreland and inland wetlands larger than two acres. Inland wetlands provide wildlife habitat, groundwater recharge and runoff retention functions and would benefit from county protection.

Waupaca County:

“(The shoreland-wetland) district shall also include wetlands delineated on Wisconsin Inventory maps for Waupaca County which are at least partially within the shoreland area described in Sections ___ and ___. Such wetlands and adjacent contiguous wetlands shall be regulated as if they were entirely within the shoreland area.”

Waupaca County has taken a more limited approach than Dane County. Waupaca County regulates wetlands partially within the shoreland area as if they were entirely within the shoreland. The model ordinance only requires regulation of the shoreland portion. The Waupaca approach provides more consistent and complete protection for those wetlands most directly connected to navigable waters.

Wetland Buffers:

Sawyer County:

The same impacts from adjacent uplands that affect lakes and rivers can degrade wetlands as well. Buffers can help protect against siltation, pollution

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Ordinance Language

Requires a 40 foot setback from all nonnavigable wetlands.

Waukesha County:

Requires a 75 foot setback from the shoreland district.

Waupaca County

Requires a 25 foot setback from both inland and shoreland wetlands, non-navigable streams and drainageways.

8.11 LOCATING SHORELAND-WETLAND BOUNDARIES.

Where an apparent discrepancy exists between the shoreland-wetland district boundary shown on the Wisconsin Wetland Inventory maps and actual field conditions at the time the maps were adopted, the zoning administrator shall contact the appropriate district office of the Department to determine if the shoreland-wetland district boundary as mapped is in error. If Department staff concur with the zoning administrator that a particular area was incorrectly mapped as a wetland, the zoning administrator shall have the authority to immediately grant or deny a zoning permit in accordance with the regulations applicable to the correct zoning district. The zoning administrator shall initiate a map amendment to correct the discrepancy.

DNR Recommended language:

Change the second sentence in paragraph 8.11 to read:

“If Department staff concur with the zoning administrator that a particular area was incorrectly mapped either as a wetland or a non-wetland, the zoning administrator shall have the authority to immediately grant or deny a zoning permit in accordance with the regulations applicable to the correct zoning district.”

Commentary

and loss of wetland function.

Floodplains and non-navigable drainages ultimately affect navigable waters. Buffering these areas helps protect water quality and habitat throughout the watershed.

The current model allows for immediate corrections to WWI maps based on field inspections only in instances where the map incorrectly shows wetlands in areas that are actually uplands. The model is silent on the reverse situation, where staff identifies a wetland in the field that does not appear on Wisconsin Wetland Inventory maps. This language would permit zoning administrators to use field data to regulate wetlands missed in the inventory, and to update maps accordingly.

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8.2 PURPOSE

Ordinance Language	Commentary
<p>This district is created to maintain safe and healthful conditions, to prevent water pollution, to protect fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty and to control building and development in wetlands whenever possible. When development is permitted in a wetland, the development should occur in a manner that minimizes adverse impacts upon the wetland.</p>	
<p><u>Chippewa County:</u> <i>Wetlands are seldom suitable as building sites for the following reasons:</i></p> <ol style="list-style-type: none"><li data-bbox="195 651 1031 675"><i>(1) Septic tank systems will not function because of high groundwater;</i><li data-bbox="195 683 1031 740"><i>(2) Water supplies are often polluted by septic tank wastes that have not been adequately absorbed by the soil;</i><li data-bbox="195 748 1031 805"><i>(3) Foundations and roads crack due to poor support capabilities and frost action;</i><li data-bbox="195 813 1031 833"><i>(4) Flooding is common in spring and other times of high water.</i>	<p>Providing this background provides a more defensible legal basis for regulations and provides useful information to ordinance users.</p>

8.3 PERMITTED USES

Ordinance Language	Commentary
<p>The following uses shall be allowed, subject to general shoreland zoning regulations contained in this ordinance, the provisions of chs. 30 and 31, Wis. Stats. and the provisions of other applicable local, state and federal laws:</p>	<p>NR 115 clearly states that counties <u>shall</u> permit listed uses in shoreland-wetlands. This means that, in contrast to other shoreland zoning provisions, counties may not prohibit shoreland wetland uses more restrictively than state guidelines do. Although counties cannot ban uses permitted under NR 115, they can require permits or set reasonable conditions on such uses. Counties may also choose to regulate uses <u>adjacent</u> to wetlands, regulate small wetlands, or regulate wetlands outside the shoreland area.</p>
<p>8.31 Activities and uses which do not require the issuance of a zoning permit, but which must be carried out without any filling, flooding, draining, dredging, ditching, tiling or excavating except as allowed under sections 8.32 or 8.33.</p>	

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Ordinance Language

Commentary

- (1) Hiking, fishing, trapping, hunting, swimming, and boating
- (2) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits, and tree seeds, in a manner that is not injurious to the natural reproduction of such crops;
- (3) The pasturing of livestock;
- (4) The cultivation of agricultural crops;
- (5) The practice of silviculture, including the planting, thinning, and harvesting of timber; and
- (6) The construction or maintenance of duck blinds.

8.32 Uses which do not require the issuance of a zoning permit and which may include limited filling, flooding, draining, dredging, ditching, tiling, or excavating but only to the extent specifically provided below:

- (1) Temporary water level stabilization measures necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on silvicultural activities if not corrected;
 - (2) The cultivation of cranberries including flooding, dike and dam construction or ditching necessary for the growing and harvesting of cranberries,
 - (3) The maintenance and repair of existing agricultural drainage systems including ditching, tiling, dredging, excavating and filling necessary to maintain the level of drainage required to continue the existing agricultural use. This includes the minimum filling necessary for disposal of dredged spoil adjacent to the drainage system provided that dredged spoil is placed on existing spoilbanks where possible;
 - (4) The construction or maintenance of fences for the pasturing
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of livestock, including limited excavating and filling necessary for such construction or maintenance;

- (5) The construction or maintenance of piers, docks or walkways built on pilings, including limited excavating and filling necessary for such construction and maintenance; and
- (6) The maintenance, repair, replacement or reconstruction of existing town and county highways and bridges, including limited excavating and filling necessary for such maintenance, repair, replacement or reconstruction.

Chippewa County:

Requires a zoning permit for maintenance and repair of agricultural drainage systems and replacement or reconstruction of existing town and county highways and bridges.

Commentary

Although counties may not prohibit wetland uses permitted under NR 115, they may require permits or impose reasonable conditions as they see fit. A land use permit for allowable wetland uses can serve as a tracking device and as a way to ensure ordinance conditions are met.

8.33 Uses which require the issuance of a zoning permit under section 10.2 and which may include limited filling, flooding, draining, dredging, ditching, tiling or excavating, but only to the extent specifically provided below:

- (1) The construction and maintenance of roads which are necessary to conduct silvicultural activities or agricultural cultivation, provided that:
 - (a) The road cannot as a practical matter be located outside the wetland;
 - (b) The road is designed and constructed to minimize adverse impact upon the natural functions of the wetland enumerated in section 8.52;
 - (c) The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use;

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Commentary

Brown County:

“The road shall be designed and constructed as a single lane roadway with only such depth and width necessary to accommodate the machinery required to conduct agricultural and silvicultural activities. Any filling, flooding, draining, dredging, ditching, tiling or excavating that is to be done must be necessary for the construction and maintenance of the road.”

This language explicitly details the type of construction permitted, clarifying the intent of the ordinance.

- (d) Road construction activities are carried out in the immediate area of the roadbed only.
- (2) The construction or maintenance of nonresidential buildings, provided that:
 - (a) The building is essential for and used solely in conjunction with the raising of waterfowl, minnows or other wetland or aquatic animals; or some other use permitted in the shoreland-wetland district;
 - (b) The building cannot, as a practical matter, be located outside the wetland;
 - (c) Such building is not designed for human habitation and does not exceed 500 sq. ft. in floor area; and
 - (d) Only limited filling or excavating necessary to provide structural support for the building is authorized.
- (3) The establishment of public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, fish hatcheries, and public boat launching ramps and attendant access roads, provided that:

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Ordinance Language	Commentary
<p>(a) Any private development is used exclusively for the permitted use and the applicant has received a permit or license under ch. 29, Wis. Stats., where applicable;</p> <p>(b) Filling or excavating necessary for the construction or maintenance of public boat launching ramps or attendant access roads is allowed only where such construction or maintenance meets the criteria in section 8.33(1)(a)-(d) and;</p> <p>(c) Ditching, excavating, dredging, or dike and dam construction in public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms, fur animal farms, and fish hatcheries is allowed only for the purpose of improving wildlife habitat and to otherwise enhance wetland values.</p>	<p>Provisions for public utilities are intended to apply to local utilities and electrical distribution. Section 196.491 of Wisconsin Statutes exempts large electric generating facilities (defined as more than 300,000 kilowatts) and high-voltage transmission lines from all local regulation, including county zoning. Such facilities must comply only with state permitting requirements.</p>
<p>(4) The construction or maintenance of electric, gas, telephone, water and sewer transmission and distribution facilities, by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members and the construction or maintenance of railroad lines provided that:</p> <p>(a) The transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;</p> <p>(b) Such construction or maintenance is done in a manner designed to minimize adverse impact upon the natural functions of the wetland enumerated in section 8.52.</p>	

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8.4 PROHIBITED USES

Ordinance Language

Commentary

Any use not listed in sections 8.31, 8.32 or 8.33 is prohibited, unless the wetland or portion of the wetland has been rezoned by amendment of this ordinance in accordance with section 8.5 of this ordinance and s. 59.97(5)(e), Wis. Stats.

DNR Recommended Language:

Change reference to “s. 59.97(5)(e)” to “s. 59.69(5)(e).”

Change reflects 1995 recodification of statutes.

8.5 REZONING OF LANDS IN THE SHORELAND-WETLAND DISTRICT

Ordinance Language

Commentary

8.51 For all proposed text and map amendments to the shoreland-wetland provisions of this ordinance, the appropriate district office of the Department shall be provided with the following:

DNR Recommended Language:

Change references to “district office” to “local office.”

Change reflects DNR reorganization.

- (1) A copy of every petition for a text or map amendment to the shoreland-wetland provisions of this ordinance, within 5 days of the filing of such petition with the county clerk. Such petition shall include a copy of the Wisconsin Wetland Inventory map adopted as part of this ordinance describing any proposed rezoning of a shoreland-wetland;
 - (2) Written notice of the public hearing to be held on a proposed amendment at least 10 days prior to such hearing;
 - (3) A copy of the county zoning agency's findings and recommendations on each proposed amendment within 10 days after the submission of those findings and recommendations to the county board; and
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Commentary

- (4) Written notice of the county board's decision on the proposed amendment within 10 days after it is issued.

8.52 A wetland, or a portion thereof, in the shoreland-wetland district shall not be rezoned if the proposed rezoning may result in a significant adverse impact upon any of the following:

- (1) Storm and flood water storage capacity;
- (2) Maintenance of dry season stream flow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, or the flow of groundwater through a wetland;
- (3) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- (4) Shoreline protection against soil erosion;
- (5) Fish spawning, breeding, nursery or feeding grounds;
- (6) Wildlife habitat; or
- (7) Areas of special recreational, scenic or scientific interest, including scarce wetland types.

8.53 If the Department notifies the county zoning agency that a proposed text or map amendment to the shoreland-wetland provisions of this ordinance may have a significant adverse impact upon any of the criteria listed in section 8.52 of this ordinance, that amendment, if approved by the county board, shall contain the following provision:

8.53 If the Department notifies the county zoning agency that a

Note that this language prohibits re-zoning a wetland even if the proposed use “may” impact any of the listed functions. Definitive proof that a proposed use will impair a wetland’s function is not necessary.

The Department has developed a rapid assessment methodology intended for use by DNR staff to determine whether a particular wetland serves any of the functions listed in NR 115. The methodology serves as a checklist and documentation aid for decision-making.

These clauses in the model ordinance exist to prevent a situation where a

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proposed text or map amendment to the shoreland-wetland provisions of this ordinance may have a significant adverse impact upon any of the criteria listed in section 8.52 of this ordinance, that amendment, if approved by the county board, shall contain the following provision:

"This amendment shall not take effect until more than 30 days have elapsed after written notice of the county board's approval of this amendment is mailed to the Department of Natural Resources. During that 30-day period the Department of Natural Resources may notify the county board that it will adopt a superseding shoreland ordinance for the county under s. 59.971(6), Wis. Stats. If the Department does so notify the county board, the effect of this amendment shall be stayed until the s. 59.971(6) adoption procedure is completed or otherwise terminated."

DNR Recommended Language:

Change references to "s. 59.971(6)" to "s. 59.692(6)."

Commentary

county board re-zones a shoreland wetland over the DNR's objection, and grants an immediate effective date. In such a situation, a landowner could, acting on the county's decision, destroy the wetland before the DNR had an opportunity to review the decision.

The 30-day grace period officially puts the landowner on notice that the county's decision is not final and is subject to further review. Note that, this does not prevent the DNR from reviewing county ordinances and taking action at a later date. The DNR may, at any time, adopt a superseding ordinance text or map amendment under s. 59.692(6) Wis. Stats and NR 115.06(3) if it determines that a county's actions have violated NR 115.

Change reflects 1995 recodification of statutes.

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9.0 NONCONFORMING USES AND STRUCTURES.

The regulation of nonconformities is probably the most controversial aspect of any zoning program. On the one hand, landowners have a statutory right to continue to operate uses or use structures that were legal at the time they began. On the other hand, nonconformities weaken protective standards, in many cases creating serious threats to the public interest. With setback and buffer standards already compromised, shoreland nonconformities pose great risks of construction site erosion, increased runoff due to impervious surface areas and destruction of near-shore habitat.

The statutes and NR 115 balance these concerns by permitting the continued use of shoreland nonconformities, but limiting their expansion. In light of current development trends toward converting older and smaller waterfront homes to larger homes, the ability to control the expansion of nonconforming structures is critical to controlling negative impacts to water quality, near-shore habitat and natural shoreline vegetation.

The 1997-99 state budget bill (which became effective on October 14, 1997) adds a new subsection (1s) in s. 59.692, Wis. Stats., that provides that counties may not prohibit the restoration or impose cost limits on the “repair, reconstruction or improvement” of nonconforming structures that are damaged or destroyed by “violent wind, vandalism, fire or flood” after October 14, 1997, as long as the size, location and use of the repaired or reconstructed structure are the same as they were immediately before the damage occurred. Section 59.692 (1s)(b) also requires counties to allow the size of the repaired or reconstructed structure to be larger than its original size “if necessary for the structure to comply with applicable state or federal requirements.” DNR recommended language to comply with the new statute while maintaining as much of the shoreland buffer functions as possible is listed on page 77.

The 1985 DNR shoreland model ordinance Section 9.0 has a title (Nonconforming Uses & Structures) that suggests a differentiation between uses and structures. However, the text itself lumps these two categories together. Creating separate sets of regulations for uses and structures would be cleaner, and we would encourage counties to do so.

Ordinance Language

Commentary

9.1 PURPOSE & INTENT

The lawful use of a building, structure or property which existed at the time this ordinance, or an applicable amendment to this ordinance, took effect and which is not in conformity with the provisions of this ordinance, including the routine maintenance of such a building or structure, may be continued, subject to the following conditions:

Kenosha, Calumet Counties:

“Uses of land and structures which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the terms of this ordinance or future amendment thereof to remain and continue in accordance with the provisions hereinafter set forth until

The current rule does not contain a policy statement on nonconforming uses, structures and lots. The intent of the statute (and zoning practice in general in the U.S.) is to allow repairs and maintenance to nonconforming structures, but eventually to bring them into compliance with setbacks and other ordinance requirements. A clause describing the county’s purposes and intent regarding

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they are removed by economic forces or otherwise. It is not the intent of this section to encourage the survival of non-conformities since it has been determined that they are incompatible with the character of the districts involved or to permit non-conformities to be enlarged upon, expanded or extended except as provided for herein. Existing non-conformities shall not be used to justify adding structures or uses prohibited elsewhere in the same district. ”

Calumet County:

“Nonconforming uses are declared by this ordinance to be incompatible with permitted uses in the districts involved. A nonconforming use of structure and land in combination shall not be extended or enlarged after passage of this ordinance by attachment on a building or premises of additional signs intended to be seen from off the premises, or by the addition of other uses, of a nature which would be prohibited generally in the district involved. ”

Chippewa County:

“POLICY ON LEGAL NONCONFORMING USES AND STRUCTURES. Unlimited future expansion of nonconforming uses and structures can jeopardize the long-term objectives of our community planning and zoning efforts. Allowing existing nonconforming uses and structures to greatly expand or be reconstructed after disasters can mean further encroachment toward the water, further destruction of natural shoreline vegetation and its buffering and sediment reduction ability, and increased runoff of sediment and nutrients to the water. These are in conflict with protection of water quality, fish and aquatic life that are among the purposes of shoreland zoning. Our policy is to minimize the adverse impacts of nonconforming uses and structures by allowing only their limited expansion. ”

9.11 If a nonconforming use is discontinued for twelve (12) consecutive months, any future use of the building, structure or property shall conform to this ordinance.

Waukesha County:

“When any (nonconforming) use is discontinued for 12 consecutive months or 18 cumulative months during a three-year period, any future use of the

Commentary

nonconformities not only makes the ordinance more clear to landowners and decision makers, but also provides a stronger legal basis for regulation. Wisconsin courts have consistently upheld restrictions that “reasonably relate to” the purposes of an ordinance; the more explicit those purposes are, the easier it is to defend such restrictions in court.

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land or structure shall conform to the use regulations of the applicable district.”

Dodge County:

“When a nonconforming use is damaged by fire, explosion, flood, public enemy, or other calamity to the extent of more than fifty (50) percent of its current assessed value, it shall not be restored except so as to comply with all the provisions of this ordinance.”

Calumet County (Waukesha County has similar language):

“Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50 percent of its equalized assessed valuation at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance.”

Portage County:

“(g) If any nonconforming structure or any structure with a nonconforming use is destroyed or is so badly damaged that it cannot be practically restored, it cannot be replaced, reconstructed or rebuilt unless the use and the structure meet the requirements of this ordinance. For the purpose of this Subsection, restoration is deemed impractical where the total cost of such restoration would exceed 50 percent of the present equalized assessed value of the structure.”

DNR Recommended Language To Implement 1997-99 Budget Legislation:

*“9. Nonconforming Structures Damaged or Destroyed by Violent Wind, Fire, Flood or Vandalism
As required by s. 59.692(1s), Wis. Stats., if a landowner can establish that a nonconforming structure has been destroyed or damaged after October 14, 1997 by violent wind, vandalism, fire or flood, the structure may be reconstructed or repaired to the size, location and use it had immediately before the damage occurred, subject to the following conditions:*

If the intent of the ordinance is eventually to eliminate nonconforming structures, then such structures should be replaced with conforming ones when it makes economic sense to do so. One could also argue that replacement of a building more than 50% destroyed is little different from new construction, and should meet the same standards.

Note that the Dodge County example deals only with structures destroyed by natural disaster, where the Calumet and Portage County language would also include those deliberately demolished.

As noted in the introduction of this section, legislation passed as part of the 1997-99 Budget Bill curtails counties’ ability to regulate the reconstruction of nonconforming structures destroyed by natural disaster. Under the new law [s. 59.692(1s)], language such as that in the Dodge, Calumet and Portage County examples is now illegal. For these counties and counties with similar language, such provisions are now superseded by state law and may not be enforced for any nonconforming structure destroyed after October 14, 1997.

Reconstruction of nonconforming structures poses a number of serious problems. Due to the proximity to the water and the absence of a functional buffer, construction activity within 75 feet of the water can cause severe erosion, sedimentation, pollution and nutrient loading of nearby waters. The need to move equipment and materials can result in almost total destruction of near-shore and littoral habitat, the most sensitive and biologically productive area of the shoreland. Longer-term and cumulative impacts on water quality, habitat and scenic beauty continue to mount with the artificially prolonged presence of a nonconforming structure, its lifespan extended by reconstruction with new materials.

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(1) A structure that is destroyed or damaged due to a deliberate act by the landowner or by his or her agent, or due to general deterioration or dilapidated condition, may not be reconstructed or repaired, except in conformance with the standards of this ordinance.

For these reasons, counties can and should impose reasonable conditions on the reconstruction or repair of damaged nonconforming structures. The language here reflects conditions necessary to protect water quality, habitat and natural scenic beauty. Counties may wish to add other conditions to meet the purposes of general zoning or nuisance ordinances, building codes, or other applicable regulations.

The new section of statute states only that counties should allow reconstruction in case of “violent wind, vandalism, fire or flood.” This provision clarifies that deliberate acts of destruction or age of the structure do not qualify as natural disasters or vandalism.

(2) Except as provided in s. 87.30(1d), Wis. Stats., nonconforming buildings that are subject to regulation under a floodplain zoning ordinance may not be reconstructed or repaired except in compliance with the floodplain zoning ordinance.

Section 87.30 (1d)(b) of the Wisconsin statutes, dealing with floodplain zoning, prohibits the reconstruction of a nonconforming structure in the floodway that is destroyed by a flood event. This ordinance provision clarifies this exception and ensures consistency with state, local and federal floodplain rules.

(3) A plan to mitigate the adverse effects of nonconformity shall be developed and submitted prior to repair or reconstruction of any destroyed or damaged nonconforming structure. The plan shall be approved by the zoning administrator, in consultation with the Land Conservation Department, prior to the issuance of a zoning permit. The plan shall include an implementation schedule and shall comply with the following requirements :

This language is similar to language in the Waupaca County ordinance dealing with expansion or remodeling of nonconforming structures. Because of the disproportionate impact nonconforming structures can have, and because reconstruction or repair will take place in the most environmentally sensitive portion of the shoreland area, additional safeguards are necessary to protect water quality, habitat and natural scenic beauty.

a. The nonconforming structure's sanitary system, if any, shall be brought up to current standards for new construction.

Older, nonconforming dwellings are likely to have aging septic systems that do not meet current sanitary code requirements. This provision would require replacement or repair before reconstruction could take place.

b. A thirty-five foot buffer area of native vegetation shall be planted or restored to the extent possible. To the extent possible, such buffer shall comply with current Wisconsin Forestry Best Management Practices for Water Quality, shall provide effective, permanent erosion and sediment control and shall, within five years, provide at least 75% visual screening of the nonconforming

Some of the ongoing and long-term problems associated with nonconforming structures can be mitigated by an effective vegetative buffer. This provision addresses water quality and scenic beauty concerns with specific performance measures. References to best management practices provide guidance on accepted practices for achieving these goals. Depending on the location of the structure, complete compliance may not be possible, but counties should strive

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<p><i>structure, as seen from the water.</i></p>	<p>for as effective and complete a restoration as conditions on the site allow.</p>
<p>c. <i>Impervious surface limits described in Section ___ of this ordinance shall be met.</i></p>	<p>With other protective standards already compromised, nonconforming structures pose particular problems for runoff control and can have a disproportionate effect on water quality.</p>
<p>c. <i>Stormwater and runoff shall be controlled in compliance with the current version of <u>The Wisconsin Stormwater Manual</u> (NOTE: draft version out now, final version due in fall of 1997).</i></p>	<p>Impervious surface limits and stormwater control measures, such as guttering or infiltrator systems, can help reduce the detrimental effect of uncontrolled runoff. In some cases, this may require addressing runoff problems or reducing impervious surfaces elsewhere on the property.</p>
<p>d. <i>Exterior building materials shall be colored as to make the structure visually inconspicuous.</i></p>	
<p>e. <i>Any grading, filling or dredging associated with reconstruction or repair must comply with Section ___ of this ordinance. Excess fill, rock or materials associated with reconstruction or repair shall be removed from the site and may not be deposited within the building setback required by Section ___ of this ordinance.</i></p>	<p>Construction site erosion, potentially a problem anywhere in the shoreland, grows in significance the closer one gets to the water. In addition to being unsightly, fill deposited in the near-shore area poses an erosion risk and destroys riparian habitat by smothering natural vegetation.</p>
<p>f. <i>Any construction activities, including mitigation activities required by this section, shall comply with all applicable standards of the current version of the <u>Wisconsin Construction Site Best Management Practice Handbook</u>.</i></p>	<p>With little or no protective vegetation to filter sediments, bare soil from construction sites can be washed directly into the water. Rigorous erosion controls are essential to prevent gullyng and severe sedimentation.</p>
<p><i>(4) The landowner shall bear the burden of proof as to the size, location or use a destroyed or damaged nonconforming structure had immediately before the destruction or damage occurred.</i></p>	<p>With detailed permit records lacking for nonconforming structures, it would be nearly impossible for most counties to refute exaggerated landowner claims of structure size, location or use. This provision makes it clear that landowners must prove any such disputed claims.</p>
<p><i>(5) Repairs are authorized under this provision only to the extent that they are necessary to repair the specific damage caused by violent wind, vandalism, fire or flood, and only that portion of the nonconforming structure that has been destroyed may be reconstructed.”</i></p>	<p>This language prevents a situation where minor damage to a structure is used to justify major renovation, artificially prolonging the life of a nonconforming structure. This provision clarifies that reconstruction or repair applies only to damage actually caused by disaster or vandalism. Counties may also wish to reference other ordinance provisions governing reconstruction and repair, such as building, plumbing and electrical codes.</p>

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9.12 The maintenance and repair of nonconforming boathouses that extend waterward beyond the ordinary highwater mark of any navigable waters shall comply with the requirements of s. 30.121, Wis. Stats.

9.13 If the nonconforming use of a temporary structure is discontinued, such nonconforming use may not be recommenced.

9.14 Uses which are nuisances shall not be permitted to continue as nonconforming uses.

9.15 No structural alteration, addition or repair to any building or structure with a nonconforming use or any nonconforming building or structure, over the life of the building or structure, shall exceed 50 percent of its current estimated fair market value unless it is permanently changed to conform to the requirements of this ordinance.

Variations on 50% rule:

Several counties have the base value for 50% rule calculation as the value at the time the structure became nonconforming, rather than the current estimated fair market value.

Sawyer County:

“The current estimated fair market value shall be determined from property assessment records, or if these records are insufficient or inadequate, the current estimated fair market value shall be determined by a State certified appraiser at the expense of the property owner or applicant.”

Outagamie County:

“9. ___ Ordinary maintenance repairs are not considered structural repairs, modifications, or additions; such ordinary maintenance repairs include internal and external painting, decorating, paneling, and the replacement of doors, windows, and other non-structural components.”

Rock County:

“Value of structural repairs, additions and alterations is determined by cost of new materials and cost of contractual labor.”

This provides a more restrictive standard by “freezing” the base against which the 50% rule is applied.

Although the model ordinance exempts “routine maintenance” from the 50% rule, it does not define the term. Similarly, the model does not explicitly explain how to calculate the value of renovations or current assessed value. The Sawyer, Outagamie and Rock County examples rectify this by detailing what is and is not considered in the 50% calculation.

Specifying value estimation to indicate “cost of contractual labor” clearly addresses a common landowner challenge: proposing to use volunteer labor, resulting in an underestimated value. Another way around this problem would be to use assessed value of the proposed alterations.

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Other Restrictions on Expansion/Renovation:

Waupaca County:

“9. __ General Provisions.

(1) Nonconforming accessory structures are limited to ordinary maintenance and repair.

(2) Subject to the limitations of Section 9. __, a nonconforming principal structure (building) may be expanded. Such expansion is limited to 50% of the structure’s enclosed area at the time it became nonconforming.

(3) A structure that is nonconforming as to structural or dimensional standards may not be expanded or enlarged so as to increase its dimensional nonconformity.

9. __ Shoreline Setback Nonconformities.

(1) A principal structure which is nonconforming as to shoreline setback and which is located within 50 feet of the ordinary highwater mark may be improved internally without limitation, but may not be expanded. Such improvement shall be confined to the enclosed portions of the building envelope which existed at the time the structure became nonconforming and shall not include new basements or additional stories. Replacement of roofing, siding and windows and upgrading of insulation are permitted.

(2) A principal structure which is nonconforming as to shoreline setback and which is located more than 50 feet from the ordinary highwater mark may be expanded up to 50% of the enclosed area which existed at the time the structure became nonconforming, or 1500 square feet, whichever is less. Such expansion shall be located on the landward side of the structure wherever practicable. Section __ regarding maximum impervious surface area shall apply to such expansion.

(3) A plan to mitigate for the adverse effects of nonconformity shall be implemented concurrent with improvement or expansion of such structures.

Replacing the “50% of value” cap with one based on square footage eases tracking and makes the rule more readily understood by the public. Total floor area is easily tracked through building permit records.

The literature review concludes that expansions of nonconforming structures, particularly those extremely close to the water pose the greatest threat to environmental and aesthetic concerns. Such structures create a greater risk for sediment delivery during construction, destruction of buffer vegetation and greater visual intrusiveness. Interior remodeling is of lesser concern (a situation different from that faced by floodplain planners where the emphasis is on removing nonconforming structures because of the risks they pose to life, health and property.)

On the other hand, for structures somewhat further from the water, improving the quality of whatever shoreland buffer remains might mitigate the effects of limited expansion. In many situations, this could be preferable to demolishing a nonconforming building, or to continued use of a substandard, unimproved structure with a poor quality buffer. An absolute cap on total enclosed area prevents unlimited expansion.

Waupaca County requires specified improvements as a condition for expansion of nonconforming structures more than 50 feet from the OHWM. This

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The plan shall be approved by the zoning administrator prior to the issuance of a zoning permit. It shall include a compliance schedule and the following considerations:

- *the associated sanitary system must be brought up to current standards for new construction ;*
- *nonconforming accessory structures of less than \$2,000.00 current fair market or appraised value shall be abandoned (this threshold shall be revised at least every 5 years based on the federal consumer price index);*
- *a shoreline buffer area of native vegetation shall be restored to the extent practicable;*
- *erosion & stormwater runoff shall be controlled; and*
- *exterior building materials shall be colored as to make the structure visually inconspicuous. ”*

Chippewa County:

“ No addition to any part of a nonconforming structure can exceed the height of that part of the original structure that is nonconforming. (Example: A deck which is closer to a waterway than the main structure could not be converted to a sun room because of the increase in height.)

The property must comply with shoreline cutting regulations found in Section __. If the property is not in compliance with Section __, a restoration plan must be submitted and restorations must be completed within one year of permit issuance. ”

Calumet County:

“ (f) No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity. ”

Tracking Provisions:

represents a reasonable compromise that offers better resource protection while recognizing the economic and practical realities of property ownership.

Height restrictions help reduce the visual impact of expanded structures as seen from the water.

Specific mitigation measures for restoring vegetative buffers help reduce impacts to water quality, habitat and scenic beauty that result from expansions to nonconforming structures.

The model ordinance only addresses renovations that bring a nonconforming structure into complete compliance with zoning standards. This language would allow landowners to take incremental steps to bring structures into better compliance (such as removing a deck that extends into the setback area).

Counties have experienced a number of problems tracking changes over the lifetime of a nonconformity. Many counties do not require permits for internal renovations, so there is frequently no record of changes that would count toward the 50% of value determination. Other counties lack the staff to

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Clark County:

“The Assessor shall notify the Zoning Administrator in writing of instances of nonconforming uses which have been discontinued for a period of twelve (12) consecutive months.”

Winnebago County:

“9. __ As requests are received by the municipality for modifications or additions to nonconforming uses or nonconforming structures, a record shall be kept which lists the nonconforming uses and nonconforming structures, their present equalized assessed value, and the cost of those additions or modifications which have been permitted.”

Kenosha County: “ 9. __ (NEW) CURRENT RECORD OF NONCONFORMING USES

(a) The __ County Office of Planning and Zoning Administration shall in accordance with section 59.69(10)(b) and (c), of the Wisconsin Statutes, make a record immediately after the approval of this ordinance or amendment thereto, or change in district boundaries approved by the Town Board, all lands, premises and buildings in the townships used for purposes not conforming to the regulations applicable to the district in which they are situated. Such records shall include the legal description of the lands, the nature and extent of the uses therein, the names and addresses of the owner or occupant or both, extent of the nonconformities, the assessed value of the land and structures thereon at the time of its becoming a nonconforming lot, structure or use.

(b) Promptly upon its completion, the aforementioned record shall be published in the county as a class 1 notice under chapter 985 of the Wisconsin Statutes. Such record as corrected shall be filed without change with the Register of Deeds 60 days after the last publication and shall be prima fasci evidence of the extent and number of nonconforming uses existing on the effective date of the ordinance in the town. Correction prior to the filing of the record by the Register of Deeds may be made on the filing of sworn proof in writing, satisfactory to the Office of Planning and

adequately monitor nonconforming structures or uses.

To address these problems, several counties have established mechanisms for automatically providing data on nonconforming structures and uses. Tax assessors, who visit each property on a regular basis, are good sources for this information.

NR 115 allows counties to either develop a permitting system or to conduct an inventory of all nonconforming structures in the county’s shoreland areas to enforce zoning standards. Kenosha County is one of the very few counties that have undertaken a comprehensive nonconforming structure inventory. This helps resolve disputes about whether a structure is legally nonconforming or a violation. The inventory also provides valuable baseline data for determining permissible additions under the 50% rule.

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Commentary

Zoning Administration.

(c) The Office of Planning and Zoning Administration shall make an annual listing on nonconforming uses, discontinued or created, since the previous listing and for all other nonconforming uses. Discontinued and newly created nonconforming uses shall be recorded as provided for in subsection (b) with the Register of Deeds immediately after the annual listing.”

Nonconforming structures and uses change as they are abandoned, destroyed or modified to conform to zoning standards. Changes in zoning standards may also affect the number and distribution of nonconformities. Consequently, counties must update inventories of such structures and uses on a regular basis.

Restrictions on Nonconforming Uses:

Kenosha County:

“9. (NEW) BURDEN OF PROOF

Any property owner asserting as a defense to a charge of violating this ordinance that the property was a valid nonconforming use has the burden of demonstrating to a reasonable certainty by the greater weight of credible evidence that:

(a) The nonconforming use was legally in existence at the time the ordinance was passed or amended, and

Because nonconforming uses, by definition, began operation before zoning standards went into effect, they often lack documentation. Zoning administrators often cannot definitively prove that a use prohibited by ordinance was not in fact in operation before the ordinance went into effect.

This language makes it clear that a prohibited use will not be considered legally nonconforming unless the landowner can prove that the use predates the ordinance.

(b) That the use of the property prior to the ordinance was so active and actual that it can be said the property owner acquired a vested interest in its continuance. For purposes of this ordinance, a property owner shall be deemed to have a vested right in the use of the property where that use at the time of the effective date of this ordinance or amendment thereto is both active and actual (noncontemplated) and a substantial degree of activity or expense had been undertaken prior to the effective date of this ordinance or amendment thereto.

Permits issued prior to the existence of this ordinance shall be deemed to have created a vested right in the property owner to the extent provided in section _____ of this ordinance.

(c) That the use is substantially the same use that existed prior to

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the enactment of the ordinance or amendment thereto.”

Walworth County:

“9. (NEW) CHANGES AND SUBSTITUTION

Once a non-conforming use has been changed to a conforming use or a substandard structure has been altered so as to comply with the yard, height, parking, loading, and access provision of this ordinance, it shall not revert back to a non-conforming use or substandard structure. Once the Board of Adjustment has permitted the substitution of a more restrictive non-conforming use for the existing non-conforming use, the prior existing use shall lose its status as a legal non-conforming use and the substituted use shall become subject to all the conditions required by the Board.”

Marathon County:

“The BOA, after investigation and public hearing may authorize the change of one nonconforming use to another of the same classification provided that the BOA shall find that the proposed change of use will be no more harmful to the character of the neighborhood than the existing nonconforming use. Whenever a nonconforming use has been changed to a more restricted nonconforming use or a conforming use, such use shall not thereafter be changed to a less-restricted use.”

~~9.16 If the alteration, addition or repair of a building or structure with a nonconforming use or a nonconforming building or structure is prohibited because it is in excess of 50 percent of the current estimated fair market value, the property owner may still make the proposed alteration, addition or repair if:~~

- ~~(1) — A nonconforming use is permanently changed to a conforming use;~~
- ~~(2) — The property owner appeals the determination of the zoning administrator and either the county board of adjustment or the circuit court find in the property owner's favor under ss. 59.99(4) or 59.99(10), Wis. Stats.~~
- ~~(3) — The property owner successfully petitions to have the~~

Language in the Walworth and Marathon County ordinances clarifies that conversion to a conforming use or structure is permanent, with reversion to a nonconformity explicitly prohibited.

The language in Section 9.16 is poorly worded, and repeats provisions found elsewhere in the ordinance. To avoid confusion and simplify the ordinance, we recommend deleting this section entirely.

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~~property rezoned by amendment to this ordinance in accordance with section 11.0 of this ordinance and s. 59.97(5)(e), Wis. Stats.~~

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10.0 ADMINISTRATIVE PROVISIONS

10.1 ZONING ADMINISTRATOR

Ordinance Language

Commentary

The zoning administrator shall have the following duties and powers:

10.11 Advise applicants as to the provisions of this ordinance and assist them in preparing permit applications and appeal forms.

10.12 Issue permits and certificates of compliance and inspect properties for compliance with this ordinance.

10.13 Keep records of all permits issued, inspections made, work approved and other official actions.

10.14 Provide copies of variances, special exceptions and decisions on appeals for map or text interpretations and map or text amendments within 10 days after they are granted or denied to the appropriate district office of the Department.

DNR Recommended Language:
Change references to “district office” to “local office.”

Change reflects DNR reorganization.

10.15 Investigate and report violations of this ordinance to the appropriate county zoning committee and the district attorney or corporation counsel.

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10.2 ZONING PERMITS

Ordinance Language

Commentary

10.21 WHEN REQUIRED. Except where another section of this ordinance specifically exempts certain types of development from this requirement (as in sections 8.31 and 8.32), a zoning permit shall be obtained from the zoning administrator before any new development, as defined in section 13.2(5), or any change in the use of an existing building or structure, is initiated.

10.22 APPLICATION. An application for a zoning permit shall be made to the zoning administrator upon forms furnished by the county and shall include for the purpose of proper enforcement of these regulations, the following data:

- (1) Name and address of applicant and property owner.
- (2) Legal description of the property and type of proposed use.
- (3) A sketch of the dimensions of the lot and location of buildings relative to the lot lines, center line of abutting highways and the ordinary highwater mark of any abutting watercourses and water level on a date specified.
- (4) Location and description of any existing private water supply or sewage system or notification of plans for any such installation.

Other useful information might include: location of existing vegetation, date of construction for each structure on the lot, and location and type of materials of any decks, patios, driveways or parking areas.

10.23 EXPIRATION OF PERMIT. Zoning permits shall expire 12 months from date issued if no substantial work has commenced.

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10.3 CERTIFICATES OF COMPLIANCE

Ordinance Language

Commentary

10.31 No land shall be occupied or used and no building hereafter erected, altered or moved shall be occupied, until a certificate of compliance is issued by the zoning administrator.

- (1) The certificate of compliance shall certify that the building or premises or part thereof, and the proposed use thereof, conform to the provisions of this ordinance.
- (2) Application for such certificate shall be concurrent with the application for a zoning permit.
- (3) The certificate of compliance shall be issued within 10 days after notification of the completion of the work specified in the zoning permit, if the building or premises or proposed use thereof conforms with all the provisions of this ordinance.

10.32 The zoning administrator may issue a temporary certificate of compliance for part of a building, pursuant to rules and regulations established by the county board.

10.33 Upon written request from the owner, the zoning administrator shall issue a certificate of compliance for any building or premises existing at the time of the adoption of this ordinance, certifying after inspection the extent and type of use made of the building or premises and whether or not such use conforms to the provisions of this ordinance.

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10.4 SPECIAL EXCEPTION PERMITS

Ordinance Language

10.41 APPLICATION FOR A SPECIAL EXCEPTION PERMIT.

Any use listed as a special exception in this ordinance shall be permitted only after an application has been submitted to the zoning administrator and a special exception permit has been granted by the board of adjustment.

10.42 STANDARDS APPLICABLE TO ALL SPECIAL

EXCEPTIONS. In passing upon a special exception permit, the board of adjustment shall evaluate the effect of the proposed use upon:

- (1) The maintenance of safe and healthful conditions.
 - (2) The prevention and control of water pollution including sedimentation.
 - (3) Compliance with local floodplain zoning ordinances and opportunity for damage to adjacent properties due to altered surface water drainage.
 - (4) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
 - (5) The location of the site with respect to existing or future access roads.
 - (6) The need of the proposed use for a shoreland location.
 - (7) Its compatibility with uses on adjacent land.
 - (8) The amount of liquid and solid wastes to be generated and the adequacy of the proposed disposal systems.
 - (9) Location factors under which:
-

Commentary

Section 59.694 of Wisconsin Statutes allows the county board the option of allowing either the planning and zoning committee, or the board of adjustments, the authority to grant special exception permits (also known as conditional use permits). County practice varies widely across the state, and there seems to be little consensus about which approach is preferable. The model refers to such permits as “special exceptions” and assumes they are granted by the board of adjustments.

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Ordinance Language

Commentary

- (a) Domestic uses shall be generally preferred;
- (b) Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source;
- (c) Use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility.

10.43 CONDITIONS ATTACHED TO SPECIAL EXCEPTIONS.

Upon consideration of the factors listed above, the board of adjustment shall attach such conditions, in addition to those required elsewhere in this ordinance, as are necessary to further the purposes of this ordinance. Violations of any of these conditions shall be deemed a violation of this ordinance. Such conditions may include specifications for, without limitation because of specific enumeration: type of shore cover; specific sewage disposal and water supply facilities; landscaping and planting screens; period of operation; operational control; sureties; deed restrictions; location of piers, docks, parking and signs; and type of construction. To secure information upon which to base its determination, the board of adjustment may require the applicant to furnish, in addition to the information required for a zoning permit, the following information:

- (1) A plan of the area showing surface contours, soil types, ordinary highwater marks, ground water conditions, subsurface geology and vegetative cover.
 - (2) Location of buildings, parking areas, traffic access, driveways, walkways, piers, open space and landscaping.
 - (3) Plans of buildings, sewage disposal facilities, water supply systems and arrangement of operations.
 - (4) Specifications for areas of proposed filling, grading,
-

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Commentary

lagooning or dredging.

(5) Other pertinent information necessary to determine if the proposed use meets the requirements of this ordinance.

Bayfield County:

Requires an Environmental Impact Analysis for certain conditional uses, including:

- a) *Any subdivision consisting of 25 lots or more;*
- b) *Any resort, condominium, planned unit development, motel; hotel or multi-unit dwelling;*
- c) *Any mobile home park, campground or camping resort, and;*
- d) *Any junk or salvage yard.*

10.44 NOTICE, PUBLIC HEARING AND DECISION. Before passing upon an application for a special exception permit, the board of adjustment shall hold a public hearing. Notice of such public hearing, specifying the time, place and matters to come before the board, shall be given as a Class 2 notice under ch. 985, Wis. Stats. Such notice shall be provided to the appropriate district office of the Department at least 10 days prior to the hearing. The board shall state in writing the grounds for granting or refusing a special exception permit.

10.45 RECORDING. When a special exception permit is approved, an appropriate record shall be made of the land use and structures permitted and such permit shall be applicable solely to the structures, use and property so described. A copy of any decision on a special exception permit shall be provided to the appropriate district office of the Department within 10 days after it is granted or denied.

DNR Recommended Language:

Change references to “district office” to “local office.”

10.46 REVOCATION. Where the conditions of a special exception permit are violated, the special exception permit shall be revoked by the board of adjustment.

Environmental impact analysis provides a rigorous, standardized method for assessing risk posed by development. Intensive uses that are likely to change the character of a shoreland radically, affect sensitive areas or contribute to pollution or sedimentation are good candidates for this type of analysis. Bayfield County includes EIS guidelines as an appendix to their zoning ordinance. Standards include: descriptions of the natural state of the site, a map of the proposed development, an assessment of the expected ecological and socio-economic impact and a discussion of alternative project designs.

Change reflects DNR reorganization.

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10.5 VARIANCES

Ordinance Language	Commentary
<p>The board of adjustment may grant upon appeal a variance from the dimensional standards of this ordinance where an applicant convincingly demonstrates that:</p>	
<ol style="list-style-type: none">(1) literal enforcement of the provisions of the ordinance will result in unnecessary hardship on the applicant;(2) the hardship is due to special conditions unique to the property; and(3) such variance is not contrary to the public interest.	
<p><u>Waupaca County:</u> <i>(4)(new) such variance does not exceed the minimum relaxation of a standard which provides reasonable use of the property.</i></p>	
<p>10.51 NO USE VARIANCE. A variance shall not grant or increase any use of property which is prohibited in the zoning district.</p>	
<p>10.52 NOTICE, HEARING AND DECISION. Before passing on an application for a variance, the board of adjustment shall hold a public hearing. Notice of such hearing specifying the time, place and matters of concern, shall be given a Class 2 notice under ch. 985, Wis. Stats. Such notice shall be provided to the appropriate district office of the Department at least 10 days prior to the hearing. The board shall state in writing the reasons for granting or refusing a variance and shall provide a copy of such decision to the appropriate Department district office within 10 days of the decision.</p>	
<p><u>DNR Recommended Language:</u> <i>Change references to “district office” to “local office.”</i></p>	Change reflects DNR reorganization.

10.6 BOARD OF ADJUSTMENT

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Ordinance Language

Commentary

The chair of the county board shall appoint a board of adjustment consisting of 5 members under s. 59.99, Wis. Stats. The county board shall adopt such rules for the conduct of the business of the board of adjustment as required by s. 59.99(3), Wis. Stats.

DNR Recommended Language:

Change references to “s. 59.99” to “s. 55.694.”

10.61 POWERS AND DUTIES.

- (1) The board of adjustment shall adopt such additional rules as it deems necessary and may exercise all of the powers conferred on such boards by s. 59.99, Wis. Stats.

DNR Recommended Language:

Change reference to “s. 59.99” to “s. 55.694.”

- (2) It shall hear and decide appeals where it is alleged there is error in any order, requirements, decision or determination made by an administrative official in the enforcement or administration of this ordinance.
- (3) It shall hear and decide applications for special exception permits pursuant to section 10.4.
- (4) It may grant a variance from the dimensional standards of this ordinance pursuant to section 10.5.
- (5) In granting a special exception permit or variance, the board may not impose conditions which are more restrictive than any of the specific standards in the ordinance. Where the ordinance is silent as to the extent of restriction, the board may impose any reasonable permit conditions to effect the purpose of this ordinance.

10.62 APPEALS TO THE BOARD. Appeals to the board of adjustment may be made by any person aggrieved or by an officer, department, board or bureau of the county affected by any decision of the zoning administrator or

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Ordinance Language

Commentary

other administrative officer. Such appeal shall be made within a reasonable time, as provided by the rules of the board, by filing with the officer whose decision is in question, and with the board of adjustment, a notice of appeal specifying the reasons for the appeal. The zoning administrator or other officer whose decision is in question shall promptly transmit to the board all the papers constituting the record concerning the matter appealed.

10.63 HEARING APPEALS AND APPLICATIONS FOR VARIANCES AND SPECIAL EXCEPTION PERMITS.

- (1) The board of adjustment shall fix a reasonable time for a hearing on the appeal or application. The board shall give public notice thereof by publishing a Class 2 notice under ch. 985, Wis. Stats, specifying the date, time and place of the hearing and the matters to come before the board. Notice shall be mailed to the parties in interest. Written notice shall be given to the appropriate district office of the Department at least 10 days prior to hearings on proposed shoreland variances, special exceptions (conditional uses), and appeals for map or text interpretations.
- (2) A decision regarding the appeal or application shall be made as soon as practical. Copies of all decisions on shoreland variances, special exceptions (conditional uses), and appeals for map or text interpretations shall be submitted to the appropriate district office of the Department within 10 days after they are granted or denied.

DNR Recommended Language:

Change references to “district office” to “local office.”

Change reflects DNR reorganization.

- (3) The final disposition of an appeal or application to the board of adjustment shall be in the form of a written resolution or order signed by the chairman and secretary of the board. Such resolution shall state the specific facts which are the basis of the board's determination and shall either affirm, reverse, vary or modify the order, requirement, decision or determination appealed, in whole or in part, dismiss the appeal for lack of jurisdiction or prosecution or grant the application.

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Ordinance Language

Commentary

DNR Recommended Language :

10. __ (NEW) RECONSIDERATION

- | | |
|--|--|
| 1) <i>Resubmission: No appeal or application which has been dismissed shall again be considered unless the applicant can show a material change in circumstances.</i> | Rather than appealing a Board of Adjustment decision to the circuit court, some aggrieved landowners have instead sought simply to reapply to the Board in hopes of a more favorable decision. |
| 2) <i>Rehearing: No re-hearing of any issue already decided by the Board shall take place except upon the affirmative vote of a majority of the members of the Board upon finding that substantial material new evidence is submitted which could not have been reasonably presented at the previous hearing. Requests for re-hearing shall be in writing and shall state the reasons for the request and be accompanied by necessary data and diagrams. Re-hearings shall be subject to the same notice requirements and fees as the original hearings.</i> | This subverts the judicial review process and could lead to repetitive, frivolous or unsubstantiated appeals or re-applications for nearly every decision the Board makes. These two clauses seek to prevent this by explaining under exactly what circumstances the Board may reconsider cases on which it has already ruled. |
-

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10.7 FEES

Ordinance Language	Commentary
<u>General.</u> The county board may, by resolution, adopt fees for the following:	
(1) Land use permits.	
(2) Building permits.	
(3) Certificates of compliance.	
(4) Planned Residential Unit Development reviews.	
(5) Public hearings.	
(6) Legal notice publications.	
(7) Special exception permits.	

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11.0 CHANGES AND AMENDMENTS

Ordinance Language

Commentary

The county board may from time to time, alter, supplement or change the boundaries of use districts and the regulations contained in this ordinance in accordance with the requirements of s. 59.97(5)(e), Wis. Stats, ch. NR 115, Wis. Adm. Code and section 8.5 of this ordinance where applicable.

11.1

Amendments to this ordinance may be made on petition of any interested party as provided in s. 59.97(5)(e), Wis. Stats.

DNR Recommended Language:

Change references to “s. 59.97(5)(e)” in 11.0 and 11.1 to “s. 59.69(5)(e).”

11.2

Every petition for a text or map amendment filed with the county clerk shall be referred to the county zoning agency. A copy of each petition shall be mailed to the appropriate district office of the Department within 5 days of the filing of the petition with the county clerk. Written notice of the public hearing to be held on a proposed amendment shall be provided to the appropriate district office of the Department at least 10 days prior to the hearing.

11.3

A copy of the county board's decision on each proposed amendment shall be forwarded to the appropriate district office of the Department within 10 days after the decision is issued.

DNR Recommended Language:

Change references to “district office” to “local office.”

Change reflects DNR reorganization.

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12.0 ENFORCEMENT AND PENALTIES

The 1997-99 state budget bill (which became effective on October 14, 1997) adds a new subsection (1t) to s. 59.692, Wis. Stats., that provides that neither counties nor the DNR may commence an enforcement action against a person who owns a building or structure that is in violation of a shoreland zoning ordinance if the building or structure has been in place for more than 10 years. DNR recommended language to implement the new statute is included below.

Ordinance Language

Commentary

Any development, any building or structure constructed, moved or structurally altered, or any use established after the effective date of this ordinance in violation of the provisions of this ordinance, by any person, firm, association, corporation (including building contractors or their agents) shall be deemed a violation. The zoning administrator or the county zoning agency shall refer violations to the district attorney or corporation counsel who shall expeditiously prosecute violations. Any person, firm, association or corporation who violates or refuses to comply with any of the provisions of this ordinance shall be subject to a forfeiture of not less than ten (\$10.00) dollars nor more than two hundred (\$200.00) dollars per offense, together with the taxable costs of action. Each day which the violation exists shall constitute a separate offense. Every violation of this ordinance is a public nuisance and the creation thereof may be enjoined and the maintenance thereof may be abated pursuant to s. 59.97(11), Wis. Stats.

DNR Recommended Language:

Change reference to “s. 59.97(11)” to “59.69(11).”

Change reflects 1995 recodification.

DNR Recommended Language to Implement 1997-99 Budget Legislation Statute of Limitations

1. As required by s. 59.692(1t), Wis. Stats., where a building or structure violates the dimensional or use standards of this ordinance, and the violating building or structure has been in place more than ten years before an enforcement action is initiated, such building or structure shall be treated as a legal nonconforming structure. All provisions of Section ___ of this ordinance shall apply to such nonconforming buildings or structures.

Section 59.692(1t) states that the county or the DNR “may not commence an enforcement action against a person who owns a building or structure that is in violation of a shoreland zoning standard. . . if the building or structure has been in place for more than 10 years.” This statute became effective on October 14, 1997. It does not affect any enforcement action initiated before that date.

Structures falling into this category should be treated as legal nonconforming structures to prevent unlimited expansion or repair.

2. Any property owner asserting as a defense to a charge of violating this ordinance that the alleged violation has been in place more than ten years before enforcement action was initiated has the burden of proving that:

The statute as written is silent on the question of who must bear the legal burden of proving a violation is more than ten years old. As is the case with variances, that burden should rest with the landowner. Laws and ordinances

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Ordinance Language	Commentary
(a) <i>The building or structure that is in violation has been in place more than ten years before enforcement action was initiated;</i>	are presumed to be applied generally; anyone seeking differential or special treatment should have to prove their case. Also, particularly in the situation of a previously undetected violation where there is no permit record, the landowner is likely to have better access to relevant facts and information than would the county. Finally, if the burden rested with the county, frivolous challenges to enforcement actions could undermine the ordinance, allowing legitimate, recent violations to remain uncorrected.
(b) <i>That the building or structure (and its use, if the use is nonconforming) has remained essentially unchanged for at least ten years;</i>	
(c) <i>That the use of the building or structure has been active and continual for ten years or more. If use was discontinued for more than twelve months, that use shall not be considered active and continual.</i>	

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13.0 DEFINITIONS

Ordinance Language

Commentary

13.1

For the purpose of administering and enforcing this ordinance, the terms or words used herein shall be interpreted as follows: Words used in the present tense include the future; words in the singular number include the plural number; and words in the plural number include the singular number. The word "shall" is mandatory, not permissive. All distances unless otherwise specified shall be measured horizontally.

13.2

The following terms used in this ordinance mean:

Green Lake County:

(new) *"Access site or lot" means a parcel of land which is contiguous to a body of water (lake or river) which provides a means for waterfront access for back lot development.*

- (1) *"Accessory structure or use" means a detached subordinate structure or a use which is clearly incidental to, and customarily found in connection with, the principal structure or use to which it is related, and which is located on the same lot as the principal structure or use.*

Green Lake County:

(new) *"Back lot" means a parcel of any size, whether or not improved or subdivided or platted, which does not abut the shoreline or ordinary high water mark of a lake.*

Green Lake County:

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Ordinance Language

Commentary

(new) *"Backlot development," also known as "lot pyramiding", "keyhole development" or "development funneling" is the practice whereby a lot, lots, outlot or common open space or commonly owned lot is used for waterfront access by a number of parcels or lots located away from or not contiguous to the water body.*

DNR Recommended Language (NR 118):

(new) *"Bluff face" means that area riverward from the bluff line where slope toward the river equals 12% or more with the horizontal interval of measurement not exceeding 50 feet.*

(new) *"Bluff line" means a line along the top of a slope, connecting the points at which the slope, proceeding away from a river or adjoining watershed channel and which is not visually inconspicuous, becomes less than 12%.*

(2) "Boathouse" means any permanent structure designed solely for the purpose of protecting or storing boats and related equipment for noncommercial purposes.

Green Lake County:

(new) *"Buffer strip" means a parcel of land abutting a lake on either side of an access lot. It may be used for any purpose permitted by the zoning ordinance.*

(3) "County zoning agency" means that committee or commission created or designated by the county board under s. 59.97(2)(a), Wis. Stats, to act in all matters pertaining to county planning and zoning.

DNR Recommended Language:

Change reference to "s. 59.97(2)(a)" to "s. 59.69(2)(a)."

(4) "Department" means the Department of Natural Resources.

(5) "Development" means any man-made change to improved or unimproved real estate, including, but not limited to the construction of buildings, structures or accessory structures; the construction of

Standards that measure setbacks from bluff lines or bluff faces need precise definitions to avoid confusion. See Section 5 for bluff standards.

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additions or substantial alterations to buildings, structures or accessory structures; the placement of mobile homes; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations, and the deposition or extraction of earthen materials.

DNR Recommended Language:

(new) *"Disabled person" means any person with a physical or mental impairment that substantially limits one or more of his or her major life activities.*

(6) *"Drainage System" means one or more artificial ditches, tile drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.*

(7) *"Floodplain" means the land which has been or may be hereafter covered by flood water during the regional flood. The floodplain includes the floodway and the flood fringe as those terms are defined in ch. NR 116, Wis. Adm. Code.*

DNR Recommended Language (NR 118):

(new) *"Lot" means a parcel, piece or portion of land defined by metes and bounds, certified survey, recorded land subdivision plat or other means and separated from other lots, parcels, or similar units by such description.*

(8) *"Navigable waters" means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 144.26(2)(d), Wis. Stats, notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.971, Wis. Stats, and ch. NR 115, Wis. Adm. Code, do not apply to lands adjacent to farm drainage ditches if:*

DNR Recommended Language:

Commentary

"Disabled person" This definition is consistent with that used in the Americans with Disabilities Act.

"Lot" A precise definition of the term "lot" helps clarify the various ways such parcels of land can be created. This definition is consistent with that used in NR 118 (St. Croix Scenic Riverway Rule).

The proposed change reflects 1995 recodification of the statutes.

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Ordinance Language

Commentary

Change reference to “s. 144.26(2)(d)” to “s. 281.31(2m)” and reference to “s. 59.971” to “s. 59.69.”

- (a) Such lands are not adjacent to a natural navigable stream or river.
- (b) Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and
- (c) Such lands are maintained in nonstructural agricultural use.

DNR Recommended Language (NR 116):

(new) *“Nonconforming structure” means an existing lawful structure which is not in conformity with the dimensional or structural standards of this ordinance.*

(new) *“Nonconforming use” means an existing lawful use or accessory use of a structure, building or development which is not in conformity with the provisions of this ordinance.*

(9) *“Ordinary highwater mark” means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristics.*

(new) *“Pyramiding” means the act of obtaining or providing access to public bodies of water across private lots or lands in a manner in which increases the number of families which have access to that water to a degree greater than what would occur with individual riparian owners having individual lots fronting on the water. The effect of pyramiding is to funnel backlot development from offshore lands or residences via a narrow parcel of land to provide access to the water. Publicly owned access points shall not fall within this definition.*

“Nonconforming structure” & “Nonconforming use” The terms “nonconforming structure” and “nonconforming use” have specific meanings that are not well explained in the model ordinance. These definitions are consistent with those used in NR 118 (St. Croix Scenic Riverway Model Ordinance)

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Commentary

- (10) "Regional Flood" means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics, once in every 100 years.
- (11) "Shorelands" means lands within the following distances from the ordinary highwater mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the floodplain, whichever distance is greater.
- (12) "Shoreland-wetland district" means the zoning district, created as a part of this shoreland zoning ordinance, comprised of shorelands that are designated as wetlands on the wetland maps which have been adopted and made a part of this ordinance.

DNR Recommended Language:

(new) "Slash materials" means any tree tops, limbs, bark, abandoned forest products, windfalls or other debris left on the land after timber or other forest products have been cut.

- (13) "Special exception (conditional use)" means a use which is permitted by this ordinance provided that certain conditions specified in the ordinance are met and that a permit is granted by the board of adjustment or, where appropriate, the planning and zoning committee or county board.

DNR recommended language (NR 116):

(new) "Structure" means any human-made object with form, shape, and utility, either permanently or temporarily attached to or placed upon the ground, river bed, stream bed or lake bed.

"Structure" The current code's lack of a definition of a "structure" has caused confusion about what is and is not subject to setbacks from the OHWM. The proposed definition is consistent with NR 116 (floodplain rule).

- (14) "Unnecessary hardship" means that circumstance where special conditions, which were not self-created, affect a particular property and make strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of this ordinance.
-

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Ordinance Language	Commentary
(15) " <u>Variance</u> " means an authorization granted by the board of adjustment to construct, alter or use a building or structure in a manner that deviates from the dimensional standards of this ordinance.	
(16) " <u>Wetlands</u> " means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.	

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14.0 SCENIC BEAUTY PROTECTION

The scientific literature has found that people consistently prefer "natural" scenes, where humans' presence or activities are visually masked, over scenes where human development is obvious. Three studies of structures along developed shorelines in Wisconsin have shown agreement between different groups of people on the perception of natural scenic beauty. All three asked people to judge slides depicting different structures in different lakeshore settings. Results indicate that most people judge lakeshore scenes with obtrusive structures to be lower in natural beauty. Maintaining a screen of intact natural shoreline vegetation and using non-contrasting building colors were found to blend shoreline structures into an otherwise more natural scene and increase ratings of natural beauty on developed shorelines.

Ordinance Language	Commentary
<p><u>Lower Wisconsin Riverway:</u> <i>Administered by the Lower Wisconsin Riverway Board, these regulations require that structures be 100 feet from the top of bluffs and not located on slopes of more than 12%. The regulations also include a number of performance standards for structure design, including: structures must be "visually inconspicuous" when leaves are on the trees, cannot exceed the height of surrounding vegetation, must make minimal use of glass, and must be painted in colors "that harmonize with the surroundings." The Riverway Board requires a planting plan before construction may begin. Hardy perennials (native species are encouraged) that screen the height and width of all structures must be used.</i></p>	<p>Among their other environmental functions, setbacks, limitations on nonconforming structures and vegetative cutting restrictions all contribute to the natural character of the shoreline. Specific design and/or screening standards can further reduce the visual impact of development. Along state and federally designated scenic waters, standards for painting and building design complement increased setbacks and restrictive cutting limitations to promote inconspicuous development.</p>
<p><u>Florence County:</u> <i>Buildings within 400 feet or visible from the Popple River must be less than 25 feet high, "rustic in design, unobtrusive in body and trim coloration, and at least 75% screened by vegetation as seen from the water during summer months." Greater setbacks and lot sizes also apply. (See Section 17.0 Lake / River Classification)</i></p>	<p>Compared to water quality or habitat issues, visual impact is relatively easy to assess and document in the field. This makes it practical to use performance, rather than prescriptive standards to address scenic beauty concerns. For example, in Florence County, a color photograph taken from the vantage point of the water and a transparent dot matrix would usually be sufficient to tell whether the construction met the "75% screening" requirement. This allows for a greater degree of flexibility and the ability to tailor standards to meet site-specific conditions.</p>
<p><u>St. Croix Scenic Riverway Model Ordinance (NR 118):</u> <i>In addition to greater setbacks and vegetative buffer areas (See Sections 5.0 and 6.0), sets standards specifically intended to reduce visual impact. These include: minimum bluff setbacks; a maximum building height of 35 feet; requirements that plantings screen stairs and lifts within 5 years; specifications that "compatible native species" be used in new plantings; and</i></p>	

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Ordinance Language

Commentary

requirements that all structures be painted in natural wood and earth tones.

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15.0 REGULATION BELOW THE OHWM

Near-shore fish habitat in lakes and larger streams often suffers when riparian owners remove aquatic vegetation for pier construction, boat access, swimming or aesthetic reasons. The literature shows that removal of aquatic vegetation can significantly reduce populations of fry and juvenile along developed shorelines compared to undeveloped shorelines. Shoreland standards for increasing lot width would help to limit the overall destruction of aquatic vegetation by limiting the number of riparian owners. Similarly, limits on number of berths and backlot development will assist in reaching this goal. Typically, the ordinary highwater mark separates county from state jurisdiction; county zoning offices regulate activities on the land, while the DNR regulates activities in the water. However, sections 30.77(2) and 30.77(3) of the statutes allow counties, towns, villages and Lake Protection Districts to enact local ordinances regulating boating and pier placement. As with shoreland zoning, such ordinances may be more restrictive than state minimums (in this case, Chapter 30 requirements) but not less so.

15.1 PIERS, WHARVES & BERTH STRUCTURES

Under section 30.13 of the statutes, the DNR has the responsibility to make sure that piers do not interfere with public or private rights, do not extend past any established pierhead lines, and do not obstruct the flow of water beneath the pier. Landowners may construct any pier meeting these minimal criteria without a permit. The statute leaves any further regulation to the discretion of the municipality or lake protection district.

Ordinance Language	Commentary
<p><u>Wisconsin Association of Lakes:</u> <i>Published a voluntary model ordinance, entitled <u>A Model Ordinance to Regulate Piers, Wharves and Berths in Wisconsin</u>. The model sets a maximum pier length of 50 feet from the OHWM, or the minimum necessary to reach 3 feet of water depth, whichever is less. Other standards include: maximum pier width of 4 feet, prohibitions against constructing piers so as to impede navigation or in ecologically sensitive areas, and a maximum berth ratio of two berths per first 50 feet of frontage and one additional berth per each additional 50 feet of frontage. The model also specifies acceptable construction materials and prohibits the use of potentially toxic or erodible materials.</i></p>	<p>As waterfront property has become increasingly scarce and expensive, some developers have started to provide water access to several offshore lots through a single “access lot.” (See Section 3. __ Backlot development.) This, in turn, has led to situations where one pier provides berths for multiple landowners. This trend can lead to the construction of exceptionally large and intrusive piers, decreasing the natural quality of the shore, potentially interfering with other riparian landowners’ access and contributing to overcrowding of the waterways.</p>
<p><u>Oneida County:</u> <i>Adopted standards similar to the WAL model above, but with some modifications. Establishes marinas, wharves and piers longer than 50' as conditional uses, allows one pier per 100' of frontage, regulates pier accessory structures (such as benches, fuel tanks and railings), and sets lighting standards.</i></p>	<p>The Wisconsin Association of Lakes and Oneida County attempt to address this problem through two main strategies. First, the number of berths permitted is linked to the total amount of water frontage owned, controlling the overall intensity of use. Second, limits on pier length, width, construction and design, control the visual, navigational and environmental impact of piers.</p>

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15.2 BOATING REGULATIONS

By statute, municipalities and lake protection districts have the authority to adopt boating ordinances to protect public health, safety and welfare.

Ordinance Language

*DNR Bureau of Law Enforcement:
Published Guidelines for Ordinance Writing & Buoy Placement in
Wisconsin Waters (PUB-LE-317-94), which contains model language that
counties, towns, villages or Lake Protection Districts may adopt to regulate
boating activities. Topics covered include: local enforcement authority,
slow-no-wake zones and hours, motorboat & waterski restrictions, speed
restrictions, traffic regulation, mooring standards and buoy placement.*

Commentary

Unregulated boat traffic can cause a variety of problems, including: traffic and safety hazards; increased shore erosion from wave action; destruction of sensitive areas and aquatic vegetation; conflict between incompatible uses (such as between jet-skis and fishing); and increased air, water & noise pollution. Careful use of standards such as slow-no-wake zones, hours of operation and/or motorboat prohibitions could benefit either heavily used or pristine waters.

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16.0 (RESERVED)

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17.0 LAKE / STREAM CLASSIFICATION SYSTEMS

NR 115 and the model shoreland zoning ordinance provide a set of uniform standards designed to provide minimal protection under average conditions across the state. Wisconsin's waterways, however, vary tremendously according to size, shape and topography of their watersheds, hydrologic and soil conditions, existing land use, and ecological interactions with the surrounding landscape. State minimums may not adequately protect some bodies of water. Classification systems identify waters subject to more protective shoreland zoning standards for a variety of reasons: to protect lakes or streams that are more sensitive to the impacts of shoreland development, to maintain the natural character of currently undeveloped or lightly developed areas, and to employ more protective standards in places where they can be most effective. Classification may offer the opportunity to provide better protection for vulnerable resources while avoiding the imposition of unreasonable restrictions on existing landowners.

Comprehensive Lake/Stream Classification:					
	Group 1	Group 2	Group 3	Rivers & Streams	Trout Streams
Waupaca County:	Wild Lakes	Mod. Dev.	Gen. Dev.		
Classifies all navigable waters in the county into 5 shoreland overlay districts:					
	Wild Lakes, 5 acres	Moderate Development, 2 acres	General Development, 20,000 ft ²	Rivers & Streams, 40,000 ft ²	Trout Streams, 40,000 ft ²
and Trout Streams. Minimum lot sizes & widths, shoreline setbacks and vegetative buffer areas vary according to district. Standards are as follows:					

Retaining walls and other shore stabilization structures are prohibited in Trout Streams and Wild Lakes districts. Riprap is also prohibited in Wild Lakes Districts; only "bio-engineered techniques approved by the Land Conservation Department" are permitted.

Incremental approaches:

Douglas County:

Establishes a Wild Lakes District, in which the following standards apply:

Minimum lot size: 10 acres
Minimum lot width: 300'
OHWM setback: 175'
Veg. buffer: 30' selective cutting permitted in any 300'
Cutting restrictions apply to first 50' from OHWM

Waupaca County has implemented the most ambitious effort at lake classification to date. Waupaca's ordinance classifies all navigable waters in the county into five categories. Classification schemes consider:

- Vulnerability to negative impacts from development, based on surface area, depth, hydrology, soils, shape, basin size and sensitivity to phosphorus;
- Current state of development, including access to sanitary sewers, and;
- State or other designated status, including Outstanding/Exceptional Resource Water classification and Class I, II, & III trout streams.

Regulatory standards range from state minimums in the General Development District to strict regulations intended to promote very low densities of low-impact development on waters in the Wild Lakes District.

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	<i>Gen. Develop. 1</i>	<i>Rec. Develop. 2</i>	<i>Nat. Environ. 3</i>	<i>Rivers & Streams</i>
<i>Sawyer County:</i>				
<i>All navigable waters in the county are classified in 4 overlay districts: General Development, Recreational Development, Natural Environment and Rivers & Streams.</i>				
	<i>181 size</i>	<i>26,000 ft²</i>	<i>30,000 ft²</i>	<i>40,000 ft²</i>
				<i>50,000 ft²</i>
<i>Shoreline setbacks remain at 75 feet in each district, 200' lot sizes, with and side yards vary with district as follows:</i>				

Standards tied to existing categories / designation of special waters:

Bayfield, Waushara Counties:

Require a 100 foot setback from the OHWM of Class I, II and III trout streams.

Jackson, La Crosse Counties:

Allow clear cut of no more than 30 feet in any 200 feet along the Black River.

Waushara County:

35 foot strip from the OHWM where clearcutting regulation is in effect is expanded to 60 feet in shorelands adjacent to Class I, II, and III trout streams.

Florence County:

Establishes a Wild Rivers Zone, in conjunction with ch. 30.26 designation of the Popple River. This Zone includes all land within 400 feet of the river, or “to the visible horizon from the water,” whichever is greater. Within this overlay district, only forestry practices “that retain, preserve and continue a minimum of 90 square feet basal area vegetation within 150 feet of the river” and seasonal residences are permitted.

Minimum lot size is 5 acres, with a minimum width of 500 feet. Buildings must be 150 feet from the OHWM and from all lot lines and cannot exceed 25 feet in height. Buildings must also be “rustic in design, unobtrusive in body and trim coloration, and at least 75% screened by vegetation as seen from the water during summer months.”

Standards tied to very simple criteria:

Barron County:

Requires a 100-foot setback and larger lot sizes on all lakes smaller than 75 acres.

Retaining walls and other artificial shore stabilization techniques simplify the near shore, reducing aquatic habitat and detracting from the natural aesthetics of pristine waters. Riprap, although less damaging to habitat than retaining walls, still leaves visible scars on the landscape, while biological techniques do not. The increased setbacks associated with Wild Lake Districts also reduce the likelihood of erosion causing an immediate threat to homes or other structures.

While providing a great deal of environmental protection, Waupaca County’s overhaul of its shoreland zoning program also represents a massive commitment of time, money and expertise. Moreover, as with any planning effort, its success depends on strong grassroots citizen support and understanding of the new policies. If the public does not fully understand the basis for classification, standards that vary from lake to lake may appear arbitrary and unfair. Drastic, wholesale changes inevitably lead to conflicts, particularly when existing landowners suddenly find themselves in nonconformance with the new standards.

Because of these issues, some counties may find it more feasible to adopt portions of a classification system, or to adopt new standards over time. For example, Douglas County originally proposed three additional categories of lakes, but decided to adopt only the Wild Lakes district. This compromise, while probably excluding waters in need of protection, at least provides strong protections for the most pristine and fragile waters.

In contrast, Sawyer County adopted a full set of lake protection overlay districts, but chose to impose a relatively narrow set of restrictions. Setbacks remain at 75 feet for all lakes, avoiding the creation of a large number of new nonconforming structures. Lot sizes and other standards vary by district. By focusing on overall density, this approach addresses the most serious and irreversible effects of lakeshore development. Presumably, other standards, such as differential standards for vegetation cutting, could be added to overlay districts over time or as public support allows.

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The idea of classifying waterbodies by potential use is not new. Statutory language authorizing the Department of Natural Resources to “. . . develop a program for classifying lakes and streams by use and to make recommendations to municipalities and other state agencies for protection and development of recreational waters . . .” [s. 23.09(m)] has been on the books since the 1920's. County, state and federal governments have singled out waters of exceptional scenic or environmental value, such as trout streams, the Popple-Peshtigo, St. Croix and Lower Wisconsin Rivers and the Great Lakes, for some time.

Such generally accepted, existing categories of exceptional water resources are good starting points for developing more protective zoning standards. Some designations, such as the St. Croix and Lower Wisconsin, come with statutory protections, but others such as trout streams, or Outstanding Resource Water designation, do not. Several counties have created overlay districts to protect these high-value waters.

Very simple schemes, such as the 75-acre size cutoff used by Barron County, are likely to leave out other types of waters equally deserving of greater protection. As noted earlier, many factors, not just size, contribute to a lake's or stream's susceptibility to degradation. On the other hand, extremely complex classification systems, with multiple tiers of water categories, may cause confusion among landowners and may prove difficult to administer.

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APPENDIX A: REFERENCE GUIDE

For information on a specific ordinance, contact the appropriate local zoning office directly (see Appendix B: County Zoning Contact List). Resources for additional information on selected topics are presented below. Please feel free to contact the Dams, Floodplain & Shoreland Management Section with questions or suggestions. The Section maintains a file of current municipal ordinances, public information documents and other resources. Contact Brian Standing at (608) 267-7571 or Sue Jones at (608) 266-8032.

Topic:	Publication:	Available From:
General Shoreland Zoning Resources	<u>Effectiveness of Shoreland Zoning Standards to Meet Statutory Objectives: A Literature Review with Policy Implications</u> (Bernthal & Jones, 1997)	Dams, Floodplain & Shoreland Mgt. WT/6 WI Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707-7921 (608) 266-8032
	<u>Local Shoreland Zoning Ordinance Innovations.</u> (Jones, 1997)	
	<u>Shoreland Management Program Assessment.</u> (Bernthal & Jones, 1997)	
Accommodations for People With Disabilities	<u>ADA Accessibility Guidelines (ADAAG)</u> (ATBCB, 1991) Order No. S-14	U.S. Architectural & Transportation Barriers Compliance Board 1331 F Street NW, Suite 1000 Washington, D.C. 20004-1111 (202) 272-5434 <i>http://www.access-board.gov</i>
	<u>ADAAG Checklist</u> (ATBCB, 1993) Order No. S-09	
	<u>Recreation Access Advisory Committee Report</u> (ATBCB, 1994) Order No. S-26	
	<u>Uniform Federal Accessibility Standards Retrofit Manual</u> (ATBCB, 1991) Order No. S-07	
	<u>Guidance on the Applicability of the ADA, the FHAA of 1988 and the WFHA in the Administration of Local Zoning Ordinances</u> (L. Meyer, 1996) Policy Guidance Memo	

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<p>Topic: Erosion / Runoff Control</p>	<p>Publication: <u>Wisconsin Construction Site Best Management Practice Handbook</u> (Baumann, 1993) Publication # WR-222 93 REV.</p>	<p>Available From: Runoff Mgt. Practices Section WT/2 Wisconsin Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707-7921 (608) 267-9306</p>
	<p><u>Wisconsin's Forestry Best Management Practices for Water Quality: Field Manual</u> (Holaday, 1995) Publication # FR093</p>	<p>Bureau of Forestry FR/4 Wisconsin Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707-7921 (608) 267-7494</p>
	<p><u>Wisconsin Stormwater Manual</u> (Prey, 1997) Publication # WR-349-94</p>	<p>Runoff Management Practices Section WT/2 Wisconsin Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707-7921 (608) 267-9306</p>
<hr/> <p>Lake / River Classification</p>	<p><u>Criteria for Evaluating Impoundments for Outstanding Resource Water Designation: Public Review Draft.</u> (Wisconsin DNR, 1995)</p>	<p>Great Lakes & Watershed Planning WT/2 WI Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707-7921 (608) 267-7610</p>
	<p><u>Lake Shoreline Classification Study: Waupaca County, Wisconsin (Revised Report)</u> (Discovery Group, 1997)</p>	<p>Waupaca County Land Conservation Dept. 811 Harding Street Waupaca, WI 54981</p>
	<p><u>A River Classification System: Shoreland Update Report No. 5.</u> (Zachmann, 1984)</p>	<p>Floodplain / Shoreland Mgt. Section Minnesota Dept. of Natural Resources St. Paul, MN</p>
<p>Regulation Below the OHWM</p>	<p><u>A Model Local Ordinance to Regulate Piers, Wharves and Berths in Wisconsin</u> (O'Connor, 1996)</p>	<p>Wisconsin Association of Lakes P.O. Box 126 Stevens Point, WI 54481-0126 (800) 542-LAKE</p>
	<p><u>Pier Law and Regulations in Wisconsin</u></p>	

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Topic:	Publication:	Available From:
	<p data-bbox="627 289 823 316">(O'Connor, 1995)</p> <p data-bbox="627 345 1083 435"><u>Guidelines for Ordinance Writing & Buoy Placement in Wisconsin Waters.</u> (Wisconsin DNR, 1992) PUB-LE-317-94</p>	<p data-bbox="1215 289 1633 500">Bureau of Law Enforcement LE/5 Wisconsin Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707 (608) 266-2141</p>
Scenic Beauty Protection	<p data-bbox="627 526 1176 586"><u>Lower Wisconsin State Riverway Law , Screening Vegetation Brochure & Summary of Regulations</u></p>	<p data-bbox="1215 526 1650 651">Lower Wisconsin State Riverway Board P.O. Box 187 Muscodia, WI 53573 (800) 221-3792</p>
	<p data-bbox="627 677 1157 769"><u>Model Lower St. Croix Scenic Riverway Zoning Ordinance</u> (Wisconsin DNR, 1984)</p>	<p data-bbox="1215 677 1686 829">Dams, Floodplain & Shoreland Mgt. WT/6 WI Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707-7921 (608) 266-8032</p>
Shoreland Vegetation	<p data-bbox="627 857 1020 917"><u>Exotic Species List</u> (Kearns, 1997) exotic.spp Rev. 6/97</p>	<p data-bbox="1215 857 1640 1010">Bureau of Endangered Resources ER/4 Wisconsin Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707 (608) 266-7012</p>
	<p data-bbox="627 1040 1131 1101"><u>Guide to Wisconsin Aquatic Plants</u> (Welsch, 1995) Publication # WR-173 95 Rev.</p>	<p data-bbox="1215 1040 1730 1193">Bureau of Fisheries Mgt. & Habitat Prot. FH/4 Wisconsin Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707 (608) 266-1877</p>
	<p data-bbox="627 1221 1157 1313"><u>Shorelandscaping: A Guide for Property Owners (Draft)</u> (UWEX, 1997)</p>	<p data-bbox="1215 1221 1535 1373">UWEX-Lakes Partnership College of Natural Resources University of Wisconsin Stevens Point, WI 54481 (715) 346-2278</p>

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Topic:	Publication: <u>Shoreline Plants & Landscaping</u> (UWEX, 1994) GWQ014	Available From: UWEX Cooperative Extension Publications Room 245, 30 N. Murray Street Madison, WI 53715 (608) 262-3345
	<u>Wisconsin's Forestry Best Management Practices for Water Quality: Field Manual</u> (Holaday, 1995) Publication # FR093	Bureau of Forestry FR/4 Wisconsin Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707-7921 (608) 267-7494
Subdivision Review, Cluster Development & Backlot Control	<u>Best Development Practices</u> (Ewing, 1996)	Publications Office American Planning Association 122 S. Michigan Ave., Suite 1600 Chicago, IL 60603
	<u>Conservation Design for Subdivisions</u> (Arendt, 1996)	Island Press 1718 Connecticut Avenue, NW, Suite 300 Washington, D.C. 20009
	<u>Emerald Shores Subdivision Restrictive Covenants</u> (Michels Investments, 1996)	Green Lake County Registrar of Deeds County Courthouse 492 Hill Street Green Lake, WI 54941
	"Inland Lake Keyhole Development: An Analysis of Local Zoning Approaches," in <u>Planning & Zoning News</u> , March '85 Issue (Wyckoff, 1985)	Planning & Zoning Center 400 Everett Drive Lansing, MI 48915 (517) 484-3333
	<u>Rural Cluster Development Guide</u> (S.E.W.R.P.C., 1996) Planning Guide # 7	SE Wisconsin Regional Planning Commission P.O. Box 1607 Old Courthouse 916 N. East Avenue Waukesha, WI 53187-1607

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Topic:	Publication:	Available From:
	<u>A Survey of the Subdivision Regulations of Wisconsin Counties</u> (Ohm, 1997) Working Paper Series	(414) 547-6721 Dept. of Urban & Regional Planning University of Wisconsin-Madison/Extension Old Music Hall 925 Bascom Mall Madison, WI 53706 (608) 262-8990
Wetland Protection	<u>Basic Guide to Wisconsin's Wetlands and Their Boundaries</u> (WI DOA, 1995) Publication # WZ-029-94	Wisconsin Department of Administration Document Sales Unit 202 S. Thornton Ave. P.O. Box 7840 Madison, WI 53707-7840 (608) 266-3358
	<u>Rapid Assessment Methodology for Evaluating Wetland Functional Values.</u> (Siebert, 1992, 1994)	Bureau of Integrated Science Services SS/6 Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707-7921 (608) 266-0531
	<u>Wetland Plants & Plant Communities of Minnesota & Wisconsin.</u> (Eggers & Reed, 1987)	St. Paul District U.S. Army Corps of Engineers 190 Fifth Street East St. Paul, MN 55101-1638
Wildlife / Aquatic Habitat	<u>Critter Condos: Managing Dead Wood for Wildlife</u> (WI DNR) Publication # WM-222	Bureau of Wildlife Management WM/4 Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707-7921 (608) 266-1877
	<u>Endangered & Threatened Species List</u> (WI DNR, 1991) Publication # ER-001 91	Bureau of Endangered Resources ER/4 Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707-7921

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Topic:	Publication:	Available From:
	<u>Guidelines for Evaluating Fish Habitat in Wisconsin Streams</u> (Simonson, Lyons & Kanehl, 1993) USDA General Technical Report NC-164	(608) 266-7012 North Central Forest Experiment Station U.S. Forest Service 375 Jackson Street St. Paul, MN 55101
	<u>Habitat Protection Planning: Where the Wild Things Are</u> (Duerksen, Elliot et al, 1997) Planning Advisory Service Report # 470/471	Publications Office American Planning Association 122 S. Michigan Ave., Suite 1600 Chicago, IL 60603 <i>pasreports@planning.org</i>
	<u>Shoreline Protection Study: A Report to the Wisconsin State Legislature</u> (Jennings, Johnson & Staggs, 1996) Publication # RS-921-96	Bureau of Integrated Science Services SS/6 Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707-7921 (608) 266-0531
	<u>To Cut or Not to Cut?: Managing Your Woodland for Wildlife</u> (WI DNR) Publication # WM-224	Bureau of Wildlife Management WM/4 Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707-7921 (608) 266-1877
	<u>A Visual Guide to Shallow Water Habitat</u> (WI DNR, 1997)	Dams, Floodplain & Shoreland Mgt. WT/6 Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707-7921 (608) 266-2220
	<u>The Wealth of Waterways: Managing Stream Corridors for Wildlife</u> (WI DNR) Publication # WM-225	Bureau of Wildlife Management WM/4 Dept. of Natural Resources P.O. Box 7921 Madison, WI 53707-7921 (608) 266-1877

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APPENDIX B: COUNTY ZONING OFFICE CONTACT LIST

Adams County Planning & Zoning Department
PO Box 187
Friendship, WI 53934
(608) 339-4222

Ashland County Zoning Administration
Courthouse Room 109
201 West Main St.
Ashland, WI 54806-1652
(715) 537-6375

Barron County Zoning Office
Agriculture Building
Barron, WI 54812
(715) 537-6375

Bayfield County Zoning Department
PO Box 58
Washburn, WI 54891
(715) 373-6138

Brown County Zoning Office
305 E. Walnut Street, Room 320
PO Box 23600
Green Bay, WI 54305-3600

Buffalo County Zoning Office
Box 492
Alma, WI 54610-0492
(608) 685-6218

Burnett County Zoning Office
County Government Center
7410 CTH K, #102
Siren, WI 54872
(715) 349-2138

Calumet County Planning Department
206 Court Street
Chilton, WI 53014
(920) 849-1442

Chippewa County Zoning Department
711 North Bridge Street
Chippewa Falls, WI 54729-1876
(715) 726-7940

Clark County Planning, Zoning & Solid Waste
Room 204A, 517 Court Street
Neilsville, WI 54456
(715) 743-5130

Columbia County Planning & Zoning Office
Carl C. Fredrick Building
PO Box 177
Portage, WI 53901
(608) 742-9660

Crawford County Sanitation & Zoning Office
111 West Dunn St.
Prairie du Chien, WI 53821
(608) 326-0294

Dane County Zoning Office
Room 116, City-County Building
Madison, WI 53709
(608) 266-9083

Dodge County Planning & Development Dept.
County Administration Building
127 East Oak Street
Juneau, WI 53039
(414) 386-3700

Door County Planning Department
421 Nebraska Street
Sturgeon Bay, WI 54235-0670
(414) 746-2323

Douglas County Zoning Office
1313 Belknap Street, Room 206
Superior, WI 54880
(715) 395-1380

Dunn County Zoning
800 Wilson Avenue
Menomonie, WI 54751
(715) 232-1401

Eau Claire County
Dept. of Planning & Development
721 Oxford Avenue, Room 1510
Eau Claire, WI 54703
(715) 839-2979

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Florence County Planning & Zoning
501 Lake Avenue
PO Box 627
Florence, WI 54121
(715) 528-3206

Fond du Lac County Planning Office
160 South Macy Street
Fond du Lac, WI 54935
(414) 929-3135

Forest County Zoning Office
200 East Madison St.
Crandon, WI 54520
(715) 478-3893

Grant County Zoning Department
111 South Jefferson
Lancaster, WI 53813
(608) 723-2848

Green County Zoning Office
N3150 Highway 81
PO Box 358
Monroe, WI 53566
(608) 328-9423

Green Lake County Zoning Office
492 Hill Street
Green Lake, WI 54941
(414) 294-4027

Iowa County Zoning Office
Iowa County Courthouse
Dodgeville, WI 53533
(608) 935-5077

Iron County Land & Zoning Office
Iron County Courthouse
Hurley, WI 54534
(715) 561-5414

Jackson County Environmental Health & Zoning
307 Main Street
Black River Falls, WI 54615
(715) 284-0220

Jefferson County Zoning & Sanitation Dept.
County Courthouse Room 214
Jefferson, WI 53549
(414) 674-7130

Juneau County Planning & Zoning
250 Oak Street
Mauston, WI 53948
(608) 847-9391

Kewaunee County Zoning Office
613 Dodge St.
Kewaunee, WI 54216
(414) 388-4410 Ext. 192

La Crosse County Zoning & Land Information
400 4th St. North, Room 105
La Crosse, WI 54601-3200
(608) 785-9722

Lafayette County Planning & Zoning Office
Ag Center - 627 Washington Street
Darlington, WI 53530
(608) 776-4830

Langlade County Land Records & Regulation
800 Clermont St.
Antigo, WI 54409-1985
(715) 627-6206

Lincoln County Zoning Office
1110 East Main Street
Merrill, WI 54452-2554
(715) 536-0333

Manitowoc County
Planning & Park Commission
4319 Expo Drive, Box 610
Manitowoc, WI 54221-0610
(414) 683-4185

Marathon County Zoning & Surveying Dept.
210 River Drive
Wausau, WI 54403-5449
(715) 847-5306

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Marinette County Zoning Department
1926 Hall Avenue
PO Box 320
Marinette, WI 54143-0320
(715) 732-7535

Marquette County Zoning Department
PO Box 21
Montello, WI 53949
(608) 297-9159

Menominee County Assessor's Office
Menominee County Courthouse
PO Box 279
Keshena, WI 54135
(715) 799-3001

Monroe County Zoning Department
Community Services Center
Route 2, Box 21A
Sparta, WI 54656
(608) 269-8737

Oconto County Zoning Office
301 Washington Street
Oconto, WI 54153-1621
(414) 834-6827

Oneida County Planning & Zoning Office
Oneida County Courthouse
PO Box 400
Rhineland, WI 54501-0400
(715) 369-6130

Outagamie County Planning & Zoning Office
410 South Walnut Street
Appleton, WI 54911
(414) 832-5255

Ozaukee County Environmental Health Dept.
Ozaukee County Administration Center
PO Box 994
Port Washington, WI 53074
(414) 284-8313

Pepin County Zoning Office
740 Seventh Avenue West
PO Box 39
Durand, WI 54736
(715) 672-8897

Pierce County Dept. of Land Mgt. & Records
414 West main Street
PO Box 647
Ellsworth, WI 54011
(715) 273-6864

Polk County Zoning Office
100 Polk County Plaza, Suite 130
Balsam Lake, WI 54810
(715) 485-9279

Portage County Planning & Zoning Department
1516 Church Street
Stevens Point, WI 54481
(715) 346-1334

Price County Zoning Administration
102 South Eyder Ave., Room 205
Phillips, WI 54555
(715) 339-3272

Racine County Planning & Development Div.
14200 Washington Ave.
Sturtevant, WI 53177
(414) 886-8470

Richland County Zoning Office
181 West Seminary
Richland Center, WI 53581
(608) 647-2447

Rock County Dept. of Planning Development
51 South Main Street
Janesville, WI 53545
(608) 757-5587

Rusk County Zoning Office
311 Miner Avenue East
Ladysmith, WI 54848
(715) 532-2156

St. Croix County Zoning Office
1101 Carmichael Road
Hudson, WI 54016-7710
(715) 386-4680

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Sauk County Planning & Zoning Office
505 Broadway
Baraboo, WI 53913
(608) 355-3285

Sawyer County Zoning Administration
PO Box 668
Hayward, WI 54843
(715) 634-8288

Shawano County Planning & Zoning Office
311 North Main Street
Shawano, WI 54166
(715) 526-6766

Sheboygan County Planning & Resources Dept.
615 North 6th Street
Sheboygan, WI 53081
(414) 459-3060

Taylor County Zoning Office
224 South Second Street
Medford, WI 54773
(715) 748-1485

Trempealeau County Zoning Department
PO Box 67
Whitehall, WI 54773
(715) 538-2311

Vernon County Sanitarian & Zoning Office
PO Box 306
Viroqua, WI 54665
(608) 637-7018

Vilas County Zoning, Planning & Pollution Ctl.
Vilas County Courthouse
PO Box 369
Eagle River, WI 54521
(715) 479-3620

Walworth County Planning, Zoning & Sanitation
W3929 County NN
Elkhorn, WI 53121-4362
(414) 741-3394

Washburn County Zoning Department
Washburn County Courthouse
Shell Lake, WI 54871
(715) 468-2666

Washington County Land Use & Park Dept.
333 East Washington Street, Suite 2300
West Bend, WI 53095-2585
(414) 335-4445

Waukesha County Park & Land Use Dept.
1320 Pewaukee Road, Room 230
Waukesha, WI 53188-3868
(414) 548-7790

Waupaca County Zoning Administration
811 Harding Street
Waupaca, WI 54981
(715) 258-6255

Waushara County Zoning Office
Waushara County Courthouse
PO Box 149
Wautoma, WI 54982-0149
(414) 787-0453

Winnebago County Planning & Zoning Dept.
448 Algoma Boulevard
PO Box 2808
Oshkosh, WI 54903-2808
(414) 236-4840

Wood County Planning & Zoning Office
400 Market Street
PO Box 8095
Wisconsin Rapids, WI 54495-8095
(715) 421-8466