

# A Model County Shoreland Zoning Ordinance for Wisconsin's Shoreland Protection Program

Revision October 16, 2019



SHORELAND  
WETLAND Zoning

Model County

# SHORELAND ZONING ORDINANCE

## Statutory References

Adjacent to each section of the Model, the Department has referenced where that section is located in NR 115 or in other Statutes and Codes. A County is not required to adopt these references in its ordinance, but may utilize the references for organizational purposes in ordinance development.

## Table of Contents

<u>Section</u>	<u>Page</u>
<b>Preface</b>	<b>4</b>
<b>1.0 Statutory Authorization, Finding of Fact, Statement of Purpose and Title</b>	<b>5</b>
1.1 Statutory Authorization	5
1.2 Finding of Fact	5
1.3 Purpose and Intent	5
1.4 Title	5
<b>2.0 General Provisions</b>	<b>5</b>
2.1 Areas to Be Regulated	5
2.2 Shoreland-Wetland Maps	6
2.3 Compliance	6
2.4 Municipalities and State Agencies Regulated	6
2.5 Abrogation and Greater Restrictions	6
2.6 Interpretation	7
2.7 Severability	7
<b>3.0 Shoreland-Wetland District</b>	<b>7</b>
3.1 Designation	7
3.2 Purpose	8
3.3 Permitted Uses	8
3.4 Prohibited Uses	9
3.5 Rezoning of Lands in the Shoreland-Wetland District	9
<b>4.0 Land Division Review and Sanitary Regulations</b>	<b>10</b>
4.1 Land Division Review	10
4.2 Planned Unit Development	11
4.3 Sanitary Regulations	11
<b>5.0 Minimum Lot Size</b>	<b>12</b>
5.1 Purpose	12
5.2 Sewered Lots	12
5.3 Unsewered Lots	12
5.4 Substandard Lots	12
5.5 Other Substandard Lots	12
<b>6.0 Building Setbacks</b>	<b>12</b>
6.1 Shoreland Setbacks	12
6.2 Reduced Principal Structure Setback	14
6.3 Increased Principal Structure Setback	14
6.4 Floodplain Structures	15
<b>7.0 Vegetation</b>	<b>15</b>
7.1 Purpose	15
7.2 Activities Allowed Within a Vegetative Buffer Zone	15

<b>8.0 Filling, Grading, Lagooning, Dredging, Ditching and Excavating</b>	<b>16</b>
<b>9.0 Impervious Surfaces</b>	<b>16</b>
9.1 Purpose	16
9.2 Calculation of Percentage of Impervious Surfaces	16
9.3 General Impervious Surface Standard	16
9.4 Impervious Surface Standard for Highly Developed Shorelines	16
9.5 Maximum Impervious Surface Standard	17
9.6 Treated Impervious Surfaces	17
9.7 Existing Impervious Surfaces	18
<b>10.0 Height</b>	<b>18</b>
<b>11.0 Nonconforming Uses and Structures</b>	<b>18</b>
11.1 Discontinued Nonconforming Use	18
11.2 Maintenance, Repair, Replacement or Vertical Expansion of Nonconforming Structures	18
11.3 Lateral Expansion of Nonconforming Principal Structures Within the Setback	18
11.4 Expansion of Nonconforming Principal Structures Beyond the setback	19
11.5 Relocation of Nonconforming Principal Structures	19
<b>12.0 Structures Authorized by Variance</b>	<b>19</b>
<b>13.0 Mitigation</b>	<b>20</b>
<b>14.0 Administrative Provisions</b>	<b>20</b>
<b>15.0 Definitions</b>	<b>21</b>

## **PREFACE**

**Note: Any reference to NR 115.# is a reference to ch. NR 115, Wisconsin Administrative Code. Any #, Stats, is a reference to a chapter or section of Wisconsin Statute.**

### **Revision Required**

This Model Shoreland Zoning Ordinance is an update of the Wisconsin Shoreland Protection Ordinance developed by the Department of Natural Resources in December of 1967 and updated in 1985, 2010, 2014, 2015, and 2016. Initial revision was necessary when ch. NR 115, Wis. Adm. Code, was repealed and recreated in November 1980 to include wetland protection in shoreland areas. This model was written to assure compliance with the objectives of shoreland zoning enabling statutes 281.31 and 59.692, Stats, and to parallel as closely as possible the regulatory provisions of ch. NR 115 and the statutory language reflected in 1999 Wisconsin Act 9, 2011 Wisconsin Act 170, 2015 Wisconsin Act 55, and 2015 Wisconsin Act 167.

### **Provisions Deleted**

The revisions reflected in this version of the model ordinance are necessary to accomplish the purpose, goals, and requirements of NR 115 (as published on October 1, 2014) and the subsequent statutory changes (as mentioned above). This model is one way to meet the standards as adopted. As experience, case law, and statutory revisions demand, this model ordinance will be revised to stay consistent with current standards.

### **Shoreland Wetland Provisions**

NR 115 currently contains absolute standards for permitted uses in shoreland wetlands which cannot be made more or less restrictive. NR 115 does not prohibit counties to protect wetlands outside of the shoreland jurisdictional area.

### **Shoreland Zoning Standards**

In the past counties were allowed to adopt shoreland zoning standards more restrictive than those contained in NR 115. Currently, requirements in 2015 Wisconsin Act 55 do not allow counties to regulate a matter in a shoreland zoning ordinance more restrictively than the matter is regulated by a shoreland zoning standard. However, counties can continue to regulate a matter that is not regulated by a shoreland zoning standard.

### **Adopt the Model or Amend Your Existing Ordinance?**

The adoption of this model ordinance will meet the required minimum standards contained in NR 115 and the maximum standards as required by 2015 Wisconsin Act 55, which may be found at <http://legis.wisconsin.gov/rsb/code/nr/nr115.pdf>. An existing ordinance may afford more effective shoreland management than what may be afforded by the model by creating standards for topics in NR 115 without specific standards and by addressing other matters that may be regulated. The model ordinance, at minimum, will need to be adopted in order to be in compliance with NR 115.

## **NOTICE, HEARING, AND CERTIFICATE OF COMPLIANCE**

A Class 2 notice under ch. 985, Stats, is required prior to holding a public hearing regarding or a county adopting a revised shoreland zoning ordinance. A Class 2 notice consists of publication of the hearing notice on 2 consecutive weeks, the last at least 7 days prior to the hearing. Notice of the proposed hearing shall be provided to the appropriate Department of Natural Resources staff person. Subsequently, the county shall provide the Department of Natural Resources with a copy of the adopted ordinance language, and a signed and dated copy of the county board resolution or decision document that includes the resolution or ordinance number on it. The Department of Natural Resources shall review the adopted county shoreland zoning ordinance and prepare a certificate of compliance, as appropriate, that is mailed to the county clerk.

## **SHORELAND PROTECTION ORDINANCE**

### **1.0 STATUTORY AUTHORIZATION, FINDING OF FACT, STATEMENT OF PURPOSE AND TITLE.**

1.1 STATUTORY AUTHORIZATION. This ordinance is adopted pursuant to the authorization in s. 59.692, Stats, to implement 59.692 and 281.31, Stats.

1.2 FINDING OF FACT. Uncontrolled use of the shorelands and pollution of the navigable waters of \_\_\_\_\_ County will adversely affect the public health, safety, convenience, and general welfare and impair the tax base. The legislature of Wisconsin has 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.

1.3 PURPOSE AND INTENT. (NR 115.01) For the purpose of promoting the public health, safety, convenience and welfare, and promote and protect the public trust in navigable waters this ordinance has been established to:

(1) FURTHER THE MAINTENANCE OF SAFE AND HEALTHFUL CONDITIONS AND PREVENT AND CONTROL WATER POLLUTION THROUGH:

- (a) Limiting structures to those areas where soil and geological conditions will provide a safe foundation.
- (b) Establishing minimum lot sizes to provide adequate area for private on-site waste treatment systems.
- (c) Controlling filling and grading to prevent soil erosion problems.
- (d) Limiting impervious surfaces to control runoff which carries pollutants.

(2) PROTECT SPAWNING GROUNDS, FISH AND AQUATIC LIFE THROUGH:

- (a) Preserving wetlands and other fish and aquatic habitat.
- (b) Regulating pollution sources.
- (c) Controlling shoreline alterations, dredging and lagooning.

(3) CONTROL BUILDING SITES, PLACEMENT OF STRUCTURES AND LAND USES THROUGH:

- (a) Prohibiting certain uses detrimental to the shoreland-wetlands.
- (b) Setting minimum lot sizes and widths.
- (c) Setting minimum building setbacks from waterways.
- (d) Setting the maximum height of near shore structures.

(4) PRESERVE AND RESTORE SHORELAND VEGETATION AND NATURAL SCENIC BEAUTY THROUGH:

- (a) Restricting the removal of natural shoreland cover.
- (b) Preventing shoreline encroachment by structures.
- (c) Controlling shoreland excavation and other earth moving activities.
- (d) Regulating the use and placement of bathhouses and other structures.

1.4 TITLE. Shoreland Protection Ordinance for \_\_\_\_\_ County, Wisconsin.

### **2.0 GENERAL PROVISIONS.**

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:

- (1) Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds or flowages. (NR 115.03(8))

(2) Within three hundred (300) feet of the ordinary high-water mark of navigable rivers or streams, or to the landward side of the floodplain, whichever distance is greater. (NR 115.03(8))

(3) The provisions of this chapter apply to regulation of the use and development of unincorporated shoreland areas. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Stats, applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin Department of Transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1m), Stats, applies. (NR 115.02) Shoreland zoning requirements in annexed or incorporated areas are provided in s. 61.353 and s. 62.233, Stats.

(4) Determinations of navigability and ordinary high-water mark location shall initially be made by the zoning administrator. When questions arise, the zoning administrator shall contact the appropriate office of the Department for a final determination of navigability or ordinary high-water mark. The county may work with surveyors with regard to s. 59.692(1h).

(5) Under s. 281.31(2m), Stats, notwithstanding any other provision of law or administrative rule promulgated thereunder, this shoreland zoning ordinance does not apply to:

(a) Lands adjacent to farm drainage ditches if:

1. Such lands are not adjacent to a natural navigable stream or river;
2. Those parts of such drainage ditches adjacent to such lands were not navigable streams before ditching; and

(b) Lands adjacent to artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable water body.

2.2 SHORELAND-WETLAND MAPS. The most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer is made part of this ordinance. The maps can be viewed at

<https://dnrmaps.wi.gov/H5/?viewer=SWDV>

2.3 COMPLIANCE. The use of any land; 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, and dredging of any lands; the cutting of shoreland vegetation; and the subdivision of lots shall be in full compliance with the terms of this ordinance and other applicable local, state or federal regulations. Buildings 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.

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), Stats, applies. The construction, reconstruction, maintenance and repair of state highways and bridges by the Wisconsin Department of Transportation are exempt when s. 30.2022(1), Stats, applies.

2.5 ABROGATION AND GREATER RESTRICTIONS. (s. 59.692(5), Stats) The provisions of this ordinance supersede any provisions in a county zoning ordinance that solely relate to shorelands. In other words if a zoning standard only applies to lands that lie within the shoreland and applies because the lands are in shoreland, then this ordinance supersedes those provisions. However, where an ordinance adopted under a statute other than s. 59.692, Stats, does not solely relate to shorelands and is more restrictive than this ordinance, for example a floodplain ordinance, that ordinance shall continue in full force and effect to

the extent of the greater restrictions.

(1) (s. 59.692(2)(a), Stats) This ordinance shall not require approval or be subject to disapproval by any town or town board.

(2) (s. 59.692(2)(b), Stats.) 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.

(3) 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.

(4) 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.

(5) (s. 59.692(1d)(b), Stats) This ordinance may establish standards to regulate matters that are not regulated in NR 115, but that further the purposes of shoreland zoning as described in section 1.3 of this ordinance,

(6) (s. 59.692(1k)(a)1, Stats) Counties may not establish shoreland zoning standards in a shoreland zoning ordinance that requires any of the following:

(a) Approval to install or maintain outdoor lighting in shorelands, impose any fee or mitigation requirement to install or maintain outdoor lighting in shorelands, or otherwise prohibits or regulates outdoor lighting in shorelands if the lighting is designed or intended for residential use.

(b) Requires any inspection or upgrade of a structure before the sale or other transfer of the structure may be made.

(7) (s.59.692(7), Stats) The construction and maintenance of a facility is considered to satisfy the requirements of a shoreland zoning ordinance if:

(a) The department has issued all required permits or approvals authorizing the construction or maintenance under ch. 30, 31, 281, or 283.

A "facility" means any property or equipment of a public utility, as defined in s. 196.01 (5), or a cooperative association organized under ch. 185 for the purpose of producing or furnishing heat, light, or power to its members only, that is used for the transmission, delivery, or furnishing of natural gas, heat, light, or power.

2.6 **INTERPRETATION.** (59.69(13), Stats) In their interpretation and application, the provisions of this ordinance 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 statute and 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 statute and 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.

### **3.0 SHORELAND-WETLAND DISTRICT. (NR 115.04)**

3.1 **DESIGNATION.** This district shall include all shorelands within the jurisdiction of this ordinance which are designated as wetlands on the most recent version of the Wisconsin Wetland Inventory as depicted on the Department of Natural Resources Surface Water Data Viewer.

Note: Be sure to include a reference to the most recent version of the Wisconsin Wetland Inventory. Many counties have received new inventory data in the past several years but have not initiated an amendment to incorporate that into their ordinance. It is recommended that instead of making a specific reference to the year of the update that the county make reference the Department of Natural Resources Surface Water Data Viewer for your mapping reference. It is also important to recognize that there is no specific reference to acreage and should not be referenced in ordinance text.

(1) **LOCATING SHORELAND-WETLAND BOUNDARIES.** (NR 115.04(b)2.note) Where an apparent discrepancy exists between the shoreland-wetland district boundary shown on the Wisconsin Wetland Inventory and actual field conditions, the county shall contact the Department to determine if the map is in error. If the Department determines that a particular area was incorrectly mapped as wetland or meets the wetland definition but was not shown as wetland on the map, the county shall have the authority to immediately grant or deny a shoreland zoning permit in accordance with the applicable regulations based on the Department determination as to whether the area is wetland. In order to correct wetland mapping errors on the official zoning map, an official zoning map amendment must be initiated within a reasonable period of time.

3.2 **PURPOSE.** 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.

3.3 **PERMITTED USES.** (NR 115.04(3)) The following uses shall be allowed, subject to general shoreland zoning regulations contained in this ordinance, the provisions of chs. 30, 31, and 281.36, Stats, and the provisions of other applicable local, state and federal laws:

- (1) 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:
  - (a) Hiking, fishing, trapping, hunting, swimming, and boating;
  - (b) 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;
  - (c) The pasturing of livestock;
  - (d) The cultivation of agricultural crops;
  - (e) The practice of silviculture, including the planting, thinning, and harvesting of timber; and
  - (f) The construction or maintenance of duck blinds.
- (2) 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:
  - (a) 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;
  - (b) The cultivation of cranberries including flooding, dike and dam construction or ditching necessary for the growing and harvesting of cranberries,
  - (c) 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 spoil banks where possible;
  - (d) The construction or maintenance of fences for the pasturing of livestock, including limited excavating and filling necessary for such construction or maintenance;



- (e) The construction or maintenance of piers, docks or walkways built on pilings, including limited excavating and filling necessary for such construction and maintenance; and
  - (f) 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.
- (3) Uses which 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:

- (a) The construction and maintenance of roads which are necessary to conduct silvicultural activities or agricultural cultivation, provided that:
  - 1. The road cannot as a practical matter be located outside the wetland;
  - 2. The road is designed and constructed to minimize adverse impact upon the natural functions of the wetland enumerated in section 3.5(2);
  - 3. The road is designed and constructed with the minimum cross-sectional area practical to serve the intended use; and
  - 4. Road construction activities are carried out in the immediate area of the roadbed only.
- (b) The construction or maintenance of nonresidential buildings, provided that:
  - 1. 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;
  - 2. The building cannot, as a practical matter, be located outside the wetland;
  - 3. Such building is not designed for human habitation and does not exceed 500 sq. ft. in floor area; and
  - 4. Only limited filling or excavating necessary to provide structural support for the building is authorized.
- (c) 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:
  - 1. Any private development is used exclusively for the permitted use and the applicant has received a permit or license under ch. 29, Stats, where applicable;
  - 2. 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 3.3(3)(a); and
  - 3. 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.
- (d) 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:
  - 1. The transmission and distribution facilities and railroad lines cannot, as a practical matter, be located outside the wetland;

2. Such construction or maintenance is done in a manner designed to minimize adverse impact upon the natural functions of the wetland enumerated in section 3.5(2).

3.4 PROHIBITED USES. (NR 115.04(4)) Any use not listed in sections 3.3(1), 3.3(2) or 3.3(3) is prohibited, unless the wetland or portion of the wetland has been rezoned by amendment of this ordinance in accordance with section 3.5 of this ordinance and s. 59.69(5)(e), Stats.

3.5 REZONING OF LANDS IN THE SHORELAND-WETLAND DISTRICT. (NR 115.04(2))

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

- (a) 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 describing any proposed rezoning of a shoreland-wetland;
- (b) Written notice of the public hearing to be held on a proposed amendment at least 10 days prior to such hearing;
- (c) 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
- (d) Written notice of the county board's decision on the proposed amendment within 10 days after it is issued.

(2) 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:

- (a) Storm and flood water storage capacity;
- (b) 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;
- (c) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
- (d) Shoreline protection against soil erosion;
- (e) Fish spawning, breeding, nursery or feeding grounds;
- (f) Wildlife habitat; or
- (g) Wetlands both within the boundary of designated areas of special natural resource interest and those wetlands which are in proximity to or have a direct hydrologic connection to such designated areas as defined in NR 103.04, Wis. Adm. Code, which can be accessed at the following web site: <http://www.legis.state.wi.us/rsb/code/nr/nr103.pdf>.

(3) 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 3.5(2) 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. 59.692(6), Stats. If the Department does so notify the county board, the effect of this amendment shall be stayed until the s.

59.692(6), Stats, adoption procedure is completed or otherwise terminated."

#### **4.0 LAND DIVISION REVIEW AND SANITARY REGULATIONS. (NR 115.05(2))**

4.1 LAND DIVISION REVIEW. (NR 115.05(2)) The county shall review, pursuant to s. 236.45, 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 all of the following factors shall be considered:

- (1) Hazards to the health, safety or welfare of future residents.
- (2) Proper relationship to adjoining areas.
- (3) Public access to navigable waters, as required by law.
- (4) Adequate stormwater drainage facilities.
- (5) Conformity to state law and administrative code provisions.

#### 4.2 PLANNED UNIT DEVELOPMENT (PUD). (NR 115.05(1)(a)4)

(1) **PURPOSE.** The Planned Unit Development is intended to permit smaller non-riparian lots where the physical layout of the lots is so arranged 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 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.

(2) **REQUIREMENTS FOR PLANNED UNIT DEVELOPMENT.** The county Planning and Zoning Committee may at its discretion, upon its own motion or upon petition, approve a Planned Unit Development Overlay District upon finding, after a public hearing, that all of the following facts exist:

- (a) **Area.** The area proposed for the Planned Unit Development shall be at least 2 acres in size or have a minimum of 200 feet of frontage on a navigable water.
- (b) **Lots.** Any proposed lot in the Planned Unit Development that does not meet the minimum size standards of sections 5.2 and 5.3 shall be a non-riparian lot.
- (c) **Lot sizes, widths, setbacks, and vegetation removal.** When considering approval of a Planned Unit Development the governing body shall consider whether proposed lot sizes, widths, and setbacks are of adequate size and distance to prevent pollution or erosion along streets or other public ways and waterways. Increased shoreland setbacks shall be a condition of approval as a way of minimizing adverse impacts of development. Shore cover provisions in section 7.2 shall apply except that maximum width of a lake frontage opening shall be 100 feet and minimum vegetative buffer depth shall be increased to offset the impact of the proposed development.

Note: Counties should be aware that the planned unit development standards, as written, grant back lot access (key holing) without applying frontage requirement standards to determine overall density. This comports to NR115.05(1)(a)4. Counties may optionally include requirements to limit overall density based upon minimum frontage standards as well. These types of developments may also be known as conservation subdivisions or planned residential development. The provisions of NR 115.05(1)(a)4 apply to these types of developments where there may be a combination of a density bonus, smaller lot size and preservation of open space.

#### 4.3 SANITARY REGULATIONS. (NR 115.05(3)) The county shall adopt sanitary regulations for the

protection of health and the preservation and enhancement of water quality.

(1) Where public water supply systems are not available, private well construction shall be required to conform to ch. NR 812, Wis. Adm. Code.

(2) Where a public sewage collection and treatment system is not available, design and construction of private on-site waste treatment system shall, prior to July 1, 1980, be required to comply with ch. SPS Comm 383, Wis. Adm. Code, and after June 30, 1980 be governed by a private sewage system ordinance adopted by the county under s. 59.70(5), Stats.

## **5.0 MINIMUM LOT SIZE. (NR 115.05(1))**

5.1 PURPOSE. (NR115.05(1)(a)) Minimum lot sizes in the shoreland area shall be established to afford protection against danger to health, safety and welfare, and protection against pollution of the adjacent body of water.

5.2 SEWERED LOTS. (NR 115.05(1)(a)1) MINIMUM AREA AND WIDTH FOR EACH LOT. The minimum lot area shall be 10,000 sq. ft. and the minimum average lot width shall be 65 feet.

5.3 UNSEWERED LOTS. (NR 115.05(1)(a)2) MINIMUM AREA AND WIDTH FOR EACH LOT. The minimum lot area shall be 20,000 sq. ft. and the minimum average lot width shall be 100 feet.

5.4 SUBSTANDARD LOTS. (NR 115.05(1)(a)3) A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

(1) The substandard lot or parcel was never reconfigured or combined with another lot or parcel by plat, survey, or consolidation by the owner into one property tax parcel.

(2) The substandard lot or parcel has never been developed with one or more of its structures placed partly upon an adjacent lot or parcel.

(3) The substandard lot or parcel is developed to comply with all other ordinance requirements.

Note: The intent of this provision is to allow lots that were legally created that currently do not meet the minimum lot width and area requirements to be considered a building site provided all ordinance requirements can be met. Substandard lots that have been reconfigured by a certified survey map or consolidated into one legal description with the register of deeds, which result in a larger (closer to conforming) lot should be allowed to be utilized as a building site. Additionally, lots that have a legal description for each substandard lot on record with the Register of Deeds but have one tax parcel number assigned by the Real Property Lister or Assessor for taxing/assessing purposes should be considered separate building sites and should not be considered consolidated. Lots that have had development over the lot lines should be combined with a legal description and recorded with a new deed prior to new development occurring.

5.5 OTHER SUBSTANDARD LOTS. Except for lots which meet the requirements of section 5.4 a building permit for the improvement of a lot having lesser dimensions than those stated in sections 5.2 and 5.3 shall be issued only if a variance is granted by the board of adjustment.

## **6.0 BUILDING SETBACKS. (NR 115.05(1)(b)) Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards**

**and avoid water pollution.**

6.1 SHORELAND SETBACKS. (NR115.05(1)(b)1) Unless exempt under section 6.1(1), or reduced under section 6.2, or increased under section 6.3, a setback of 75 feet from the ordinary high-water mark of any navigable water to the nearest part of a building or structure shall be required for all buildings and structures.

(1) EXEMPT STRUCTURES. (NR 115.05(1)(b)1m) and s. 59.692(1k)(a)(6). All of the following structures are exempt from the shoreland setback standards in section 6.1:

(a) Boathouses located entirely above the ordinary high water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation. The roof of a boathouse may be used as a deck provided that:

1. The boathouse has a flat roof.
2. The roof has no side walls or screens.
3. The roof may have a railing that meets the Department of Safety and Professional Services standards.

(b) Open-sided and screened structures such as gazebos, decks, patios and screen houses in the shoreland setback area that satisfy the requirements in s. 59.692(1v), Stats:

1. The part of the structure that is nearest to the water is located at least 35 feet landward from the ordinary-high water mark.
2. The floor area of all the structures in the shoreland setback area will not exceed 200 square feet. Boathouses shall be excluded from the calculation.
3. The structure that is the subject of the request for special zoning permission has no sides or has open or screened sides.
4. The county must approve a plan that will be implemented by the owner of the property to preserve or establish a vegetative buffer zone that covers at least 70% of the half of the shoreland setback area that is nearest to the water.

Note: The statutory requirements under s. 59.692(1v) which require the establishment of a vegetative buffer for the construction of open sided structures is not superseded by s. 59.692(1f)(a).

- (c) Fishing rafts that are authorized on the Wolf River and Mississippi River under s. 30.126, Stats.
- (d) Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.
- (e) Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. SPS Comm 383, Wis. Adm. Code, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.
- (f) Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60-inches in width.
- (g) Devices or systems used to treat runoff from impervious surfaces.

(2) EXISTING EXEMPT STRUCTURES. (s.59.692(1k)(a)2m(bm), Stats) Existing exempt structures may be maintained, repaired, replaced, restored, rebuilt and remodeled provided the activity does not expand the footprint and does not go beyond the three-dimensional building envelope of the existing structure. Counties may allow expansion of a structure beyond the existing footprint if the expansion is necessary to comply with applicable state or federal requirements.

Note: Section 59.692(1k)(a)2m, Stats, prohibits counties from requiring any approval or imposing any fee or mitigation requirement for the activities specified in section 6.1(2). However, it is important to note that property owners may be required to obtain permits or approvals and counties may impose fees under ordinances adopted pursuant to other statutory requirements, such as floodplain zoning, general zoning, sanitary codes, building codes, or even stormwater erosion control.

**6.2 REDUCED PRINCIPAL STRUCTURE SETBACK.** (s.59.692(1n), Stats) A setback less than the 75' required setback from the ordinary high water mark shall be permitted for a proposed principal structure and shall be determined as follows:

- (1) Where there are existing principal structures in both directions, the setback shall equal the average of the distances the two existing principal structures are set back from the ordinary high water mark provided all of the following are met:
  - (a) Both of the existing principal structures are located on adjacent lot to the proposed principal structure.
  - (b) Both of the existing principal structures are located within 250' of the proposed principal structure and are the closest structure.
  - (c) Both of the existing principal structures are located less than 75' from the ordinary high water mark.
  - (d) The average setback shall not be reduced to less than 35' from the ordinary high water mark of any navigable water.

Note: s. 59.692(1d)(a), Stats, requires counties to adopt the standards consistent with section 6.2(1) for reducing the shoreland setback.

- (2) Where this is an existing principal structure in only one direction, the setback shall equal the distance the existing principal structure is set back from the ordinary high water mark and the required setback of 75' from the ordinary high water mark provided all of the following are met:
  - (a) The existing principal structure is located on adjacent lot to the proposed principal structure.
  - (b) The existing principal structure is located within 250' of the proposed principal structure and is the closest structure.
  - (c) The existing principal structure is located less than 75' from the ordinary high water mark.
  - (d) The average setback shall not be reduced to less than 35' from the ordinary high water mark of any navigable water.

Note: Section 6.2(2) is optional and is not required to be compliant.

**6.3 INCREASED PRINCIPAL STRUCTURE SETBACK.** (s.59.692(1n)(c), Stats) A setback greater than the required 75' from the ordinary high water mark may be required for a proposed principal structure and determined as follows:

- (1) Where there are existing principal structures in both directions, the setback shall equal the average of the distances the two existing principal structures are set back from the ordinary high water mark provided all of the following are met:
  - (a) Both of the existing principal structures are located on adjacent lot to the proposed principal structure.
  - (b) Both of the existing principal structures are located within 200' of the proposed principal structure.
  - (c) Both of the existing principal structures are located greater than 75' from the ordinary high water mark.
  - (d) Both of the existing principal structures were required to be located at a setback greater than 75' from the ordinary high water mark.
  - (e) The increased setback does not apply if the resulting setback limits the placement to an area on which the structure cannot be built.

Note: Section 6.3 is optional and can be adopted in a shoreland ordinance provided there was a previous setback that was more restrictive than the required 75' setback. Please provide the previous ordinance section.

6.4 FLOODPLAIN STRUCTURES. (NR 115.05(1)(b)2) Buildings and structures to be constructed or placed in a floodplain shall be required to comply with any applicable floodplain zoning ordinance.

## **7.0 VEGETATION. (NR 115.05(1)(c))**

7.1 PURPOSE. (NR 115.05(1)(c)1) To protect natural scenic beauty, fish and wildlife habitat, and water quality, a county shall regulate removal of vegetation in shoreland areas, consistent with the following: The county shall establish ordinance standards that consider sound forestry and soil conservation practices, as well as the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.

7.2 ACTIVITIES ALLOWED WITHIN A VEGETATIVE BUFFER ZONE. (NR 115.05(1)(c)2) To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation, the county ordinance shall designate land that extends from the ordinary high water mark to a minimum of 35 feet inland as a vegetative buffer zone and prohibit removal of vegetation in the vegetative buffer zone except as follows:

- (1) The county may allow routine maintenance of vegetation.
- (2) The county may allow removal of trees and shrubs in the vegetative buffer zone to create access and viewing corridors. Per s. 59.692(1f)(b), Stats, the viewing corridor may be at least 35 feet wide for every 100 feet of shoreline frontage. The viewing corridor may run contiguously for the entire maximum width of shoreline frontage owned.
- (3) The county may allow removal of trees and shrubs in the vegetative buffer zone on a parcel with 10 or more acres of forested land consistent with "generally accepted forestry management practices" as defined in s. NR 1.25 (2) (b), Wis. Adm. Code, and described in Department publication "Wisconsin Forest Management Guidelines" (publication FR-226), provided that vegetation removal be consistent with these practices.
- (4) The county may allow removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed be replaced by replanting in the same area as soon as practicable.
- (5) The county may authorize by permit additional vegetation management activities in the vegetative buffer zone. The permit issued under this subd. par. shall require that all management activities comply with detailed plans approved by the county and designed to control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly restored area. The permit also shall require an enforceable restriction to preserve the newly restored area.

Note: Section 59.692(1f)(a), Stats, prohibits counties from requiring a property owner to establish a vegetative buffer zone on previously developed land or expand an existing vegetative buffer zone. However, as part of a counties shoreland mitigation standards, the establishment or expansion of the vegetative buffer may remain an option.

**8.0 FILLING, GRADING, LAGOONING, DREDGING, DITCHING AND EXCAVATING. (NR115.05(1)(d))**  
Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of s. NR 115.04, the requirements of ch. 30, Stats, and other state and federal laws where applicable, and only if done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat and natural scenic beauty.

**9.0 IMPERVIOUS SURFACE STANDARDS. (NR 115.05(1)(e))**

9.1 PURPOSE. Establish impervious surface standards to protect water quality and fish and wildlife habitat and to protect against pollution of navigable waters. “

9.2 CALCULATION OF PERCENTAGE OF IMPERVIOUS SURFACE. (NR 115.05(1)(e)1) Percentage of impervious surface shall be calculated by dividing the surface area of the existing and proposed impervious surfaces on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark by the total surface area of that lot or parcel, and multiplied by 100. Impervious surfaces described in section 9.6 shall be excluded from the calculation of impervious surface on the lot or parcel. If an outlot lies between the ordinary high water mark and the developable lot or parcel and both are in common ownership, the lot or parcel and the outlot shall be considered one lot or parcel for the purposes of calculating the percentage of impervious surface.

Note: NR 115.05(1)(e)1m clarifies that if an outlot lies between the OHWM and the developed lot or parcel and both are in common ownership, then the lot or parcel should be considered one property for the purposes of calculating the percentage of impervious surfaces. If there is an outlot, parcel or road that is owned by some other entity, for example a hydroelectric facility or a town or county, then the county should determine what level of control the property owner has over that portion of the lot. Can the property owner place structures, such as shoreline protection, piers, stairs, boathouses etc... on that portion of the lot or does some other entity have control over development? If a property owner has no or little say over construction on that portion of the lot then impervious surfaces on that portion of the lot should be calculated separately.

For properties that have been “condominiumized” the impervious surface calculations apply to the entire property. The property is still under one legal description and the proposed expansion to a unit is not the only impervious surface calculated since the regulation states lot or parcel and not a unit. It will be important to remember also that mitigation applies to the property as a whole and not just to the portion of the frontage that might be in front of the unit impacted.

9.3 GENERAL IMPERVIOUS SURFACE STANDARD. (NR 115.05(1)(e)2) Except as otherwise allowed in sections 9.4 through 9.6, the county shall allow up to 15% impervious surface on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark.

9.4 IMPERVIOUS SURFACE STANDARD FOR HIGHLY DEVELOPED SHORELINES. (NR 115.05(1)(e)2m and s. 59.692(1k)(am)2, Stats) The county at its discretion may adopt an ordinance for highly developed shorelines allowing up to 30% for residential land use and up to 40% for commercial, industrial or business land uses for lands that meets one of the following standards:

- (1) The highly developed shoreline is identified as an Urbanized Area or Urban Cluster in the 2010 US Census or has a commercial, industrial, or business land use as of January 31, 2013.
- (2) After conducting a hearing and receiving approval by the department of natural resources, the county has mapped additional areas of highly developed shorelines that are at least 500 feet in length and meet the one of the following criteria:
  - (a) The majority of the lots are developed with more than 30% of impervious surface area.
  - (b) Located on a lake served by a sewerage system as defined in NR 110.03(30), Wis. Adm. Code.



- (c) The majority of the lots contain less than 20,000 square feet in area.

Note: Counties are not required under s. 59.692, Stats, to adopt the impervious surface standards for highly developed shorelines in section 9.4 but are required to adopt the general impervious surface standard in section 9.3.

**9.5 MAXIMUM IMPERVIOUS SURFACE STANDARD.** (NR 115.05(1)(e)3) A property may exceed the impervious surface standard under 9.3 or 9.4 provided the following standards are met:

- (1) For properties where the general impervious surface standard applies under section 9.3, a property owner may have more than 15% impervious surface but not more than 30% impervious surface on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark.
- (2) For properties on shorelands where the impervious surface standard for highly developed shorelines applies under 9.4, a property owner may have more than 30% impervious surface but not more than 40% impervious surface for residential land uses. For commercial, industrial or business land uses a property owner may have more than 40% impervious surface but not more than 60% impervious surface.
- (3) For properties that exceed the standard under 9.3 or 9.4 but do not exceed the maximum standard under 9.5(1) or 9.5(2), a permit can be issued for development with a mitigation plan that meets the standards found in section 12.0.

Note: Counties that do not adopt the impervious surface standards for highly developed shorelines are not required to adopt section 9.5(2).

**9.6 TREATED IMPERVIOUS SURFACES.** (NR115.05(1)(e)3m and s. 59.692(1k)(a)5, Stats) Impervious surfaces that can be documented to demonstrate they meet either of the following standards shall be excluded from the impervious surface calculations under section 9.2:

- (1) The impervious surface is treated by devices such as stormwater ponds, constructed wetlands, infiltration basins, rain gardens, bio-swales or other engineered systems.
- (2) The runoff from the impervious surface discharges to an internally drained pervious area that retains the runoff on or off the parcel and allows infiltration into the soil.

Note: The provisions in section 9.6 are an exemption from the impervious surface standards and as such should be read and construed narrowly. As such, a property owner is entitled to this exemption only when the runoff from the impervious surface is being treated by a sufficient (appropriately sized) treatment system, treatment device or internally drained. Property owners that can demonstrate that the runoff from an impervious surface is being treated consistent with section 9.6 will be considered pervious for the purposes of implementing the impervious surface standards in this ordinance. If a property owner or subsequent property owner fails to maintain the treatment system, treatment device or internally drained area, the impervious surface is no longer exempt under section 9.6.

**9.7 EXISTING IMPERVIOUS SURFACES.** (NR 115.05(1)(e)4) For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the impervious surface standard in section 9.3 or the maximum impervious surface standard in section 9.5, the property owner may do any of the following:

- (1) Maintain and repair the existing impervious surfaces;
- (2) Replace existing impervious surfaces with similar surfaces within the existing building envelope;  
or

(3) Relocate or modify an existing impervious surface with similar or different impervious surface, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of the county shoreland ordinance, and the impervious surface meets the applicable setback requirements in sections 6.1 or 6.2.

Note: The impervious surface standards in this ordinance shall not be construed to supersede other provisions in the county shoreland ordinance. All of the provisions of the county shoreland ordinance still apply to new or existing development.

**10.0 HEIGHT. (NR 115.05(1)(f)) To protect and preserve wildlife habitat and natural scenic beauty, on or after February 1, 2010, a county may not permit any construction that result in a structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters.**

**11.0 NONCONFORMING USES AND STRUCTURES. (NR 115.05(1)(g))**

11.1 DISCONTINUED NONCONFORMING USE. (NR 115.05(1)(g)3) If a nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to the ordinance.

11.2 MAINTENANCE, REPAIR, REPLACEMENT OR VERTICAL EXPANSION OF NONCONFORMING STRUCTURES. (s. 59.692(1k)(a)2,4 and (b), Stats) An existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the nonconforming structure. Further, an existing structure that was lawfully placed when constructed but that does not comply with the required shoreland setback may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level. Counties may allow expansion of a structure beyond the existing footprint if the expansion is necessary to comply with applicable state or federal requirements.

Note: Sections 59.692(1k)(a) 2,4 and (b), Stats, prohibits counties from requiring any approval or imposing any fee or mitigation requirement for the activities specified in section 11.2. However, it is important to note that property owners may be required to obtain permits or approvals and counties may impose fees under ordinances adopted pursuant to other statutory requirements, such as floodplain zoning, general zoning, sanitary codes, building codes, or even stormwater erosion control.

11.3 LATERAL EXPANSION OF NONCONFORMING PRINCIPAL STRUCTURES WITHIN THE SETBACK. (NR 115.05(1)(g)5) An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per section 6.1 may be expanded laterally, provided that all of the following requirements are met:

- (1) The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
- (2) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (3) Lateral expansions are limited to a maximum of 200 square feet over the life of the structure. No portion of the expansion may be any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (4) The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 12.0.

(5) All other provisions of the shoreland ordinance shall be met.

**11.4 EXPANSION OF A NONCONFORMING PRINCIPAL STRUCTURES BEYOND SETBACK.** (NR 115.05(1)(g)5m) An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under section 6.1 may be expanded horizontally, landward, or vertically provided that the expanded area meets the building setback requirements per section 6.1 and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph, but may be required per section 9.0.

**11.5 RELOCATION OF NONCONFORMING PRINCIPAL STRUCTURES.** (NR 115.05(1)(g)6) An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback per section 6.1 may be relocated on the property provided all of the following requirements are met:

- (1) The use of the structure has not been discontinued for a period of 12 months or more if a nonconforming use.
- (2) The existing principal structure is at least 35 feet from the ordinary high-water mark.
- (3) No portion of the relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.
- (4) The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for relocation that will result in compliance with the shoreland setback requirement per section 6.1.
- (5) The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall meet the standards found in section 12.0, and include enforceable obligations of the property owner to establish or maintain measures that the county determines are adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the replaced or relocated structure being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the County Register of Deeds.
- (6) All other provisions of the shoreland ordinance shall be met.

**12.0 MAINTENANCE, REPAIR, REPLACEMENT OR VERTICAL EXPANSION OF STRUCTURES THAT WERE AUTHORIZED BY VARIANCE.** (s. 59.692(1k)(a)2. and (a)4.) A structure of which any part has been authorized to be located within the shoreland setback area by a variance granted before July 13, 2015 may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the authorized structure. Additionally, the structure may be vertically expanded unless the vertical expansion would extend more than 35 feet above grade level. Counties may allow expansion of a structure beyond the existing footprint if the expansion is necessary to comply with applicable state or federal requirements.

Note: Section 59.692(1k)(a)2. prohibits counties from requiring any approval or imposing any fee or mitigation requirement for the activities specified in section 12. However, it is important to note that property owners may be required to obtain permits or approvals and counties may impose fees under ordinances adopted pursuant to other statutory requirements, such as floodplain zoning, general zoning, sanitary codes, building codes, or even stormwater erosion control

**13.0 MAINTENANCE, REPAIR, REPLACEMENT OF A building or structure in violation of a county shoreland zoning ordinance that, under sub. (1t), may not be enforced. (No vertical or lateral**

**expansion allowed for structures in violation)**

A structure that was illegally constructed which is older than ten years and not enforced under the shoreland ordinance may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the authorized structure.

Or

**13.0 MAINTENANCE, REPAIR, REPLACEMENT OF ILLEGAL STRUCTURES s. 59.692(1k)(a)2c, Stats)**

A structure that was illegally constructed, which is older than ten years and may not be enforced under the shoreland ordinance (s59.692(1t) Stats) may be maintained, repaired, replaced, restored, rebuilt or remodeled if the activity does not expand the footprint of the structure. (No vertical or lateral expansion allowed for structures in violation.)

**14.0 MITIGATION. (NR 115.05 (1)(e)3, (g)5, (g)6) When the county issues a permit requiring mitigation under sections 9.5, 11.3 and 11.5 the property owner must submit a complete permit application that is reviewed and approved by the county. The application shall include the following:**

- (1) A site plan that describes the proposed mitigation measures.
  - (a) The site plan shall be designed and implemented to restore natural functions lost through development and human activities.
  - (b) The mitigation measures shall be proportional in scope to the impacts on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty.
- (2) An implementation schedule and enforceable obligation on the property owner to establish and maintain the mitigation measures.
  - (a) The enforceable obligations shall be evidenced by an instrument recorded in the office of the Register of Deeds.

Note: Each county must select a mitigation system and codify that system in this ordinance that states the exact requirements. The department has developed mitigation recommendations to help guide the county as they develop the shoreland mitigation component of their ordinance. Those mitigation recommendations are available at <http://dnr.wi.gov/topic/ShorelandZoning/documents/MitigationRecommendations.pdf>.

**15.0 ADMINISTRATIVE PROVISIONS. (NR 115.05(4)) The shoreland zoning ordinance adopted by each county shall require all of the following:**

- (1) The appointment of an administrator and such additional staff as the workload may require.
- (2) The creation of a zoning agency as authorized by s. 59.69, Stats, a board of adjustment as authorized by s. 59.694, Stat., and a county planning agency as defined in s. 236.02(3), Stats, and required by s. 59.692(3), Stats.
- (3) A system of permits for all new construction, development, reconstruction, structural alteration or moving of buildings and structures, unless prohibited by s. 59.692(1k), Stats.
- (4) Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.
- (5) A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the

ordinance will result in unnecessary hardship as long as the granting of a variance does not have the effect of granting or increasing any use of property which is prohibited in that zoning district by the shoreland zoning ordinance.

(6) A special exception (conditional use) procedure for uses presenting special problems.

(7) The county shall keep a complete record of all proceedings before the board of adjustment, zoning agency and planning agency.

(8) Written notice to the appropriate office of the Department at least 10 days prior to any hearing on a proposed variance, special exception or conditional use permit, appeal for a map or text interpretation, map or text amendment, and copies of all proposed land divisions submitted to the county for review under section 4.0.

(9) Submission to the appropriate office of the Department, within 10 days after grant or denial, copies of any decision on a variance, special exception or conditional use permit, or appeal for a map or text interpretation, and any decision to amend a map or text of an ordinance.

(10) Development and maintenance of an official map of all mapped zoning district boundaries, amendments, and recordings.

(11) The establishment of appropriate penalties for violations of various provisions of the ordinance, including forfeitures. Compliance with the ordinance shall be enforceable by the use of injunctions to prevent or abate a violation, as provided in s. 59.69 (11), Stats.

(12) Pursuing the prosecution of violations of the shoreland ordinance

(13) Shoreland wetland map amendments according to s. NR 115.04. Every petition for a shoreland-wetland map amendment filed with the county clerk shall be referred to the county zoning agency. A copy of each petition shall be provided to the appropriate 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 office of the Department at least 10 days prior to the hearing. A copy of the county board's decision on each proposed amendment shall be forwarded to the appropriate office of the Department within 10 days after the decision is issued.

## **16.0 DEFINITIONS.**

15.1 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.

15.2 The following terms used in this ordinance mean:

(1) "Access and viewing corridor" (NR 115.03(1d)) means a strip of vegetated land that allows safe pedestrian access to the shore through the vegetative buffer zone.

(2) "Boathouse" (NR 115.03(1h)) means a permanent structure used for the storage of watercraft and associated materials and includes all structures which are totally enclosed, have roofs or walls or any combination of these structural parts.

(3) "Building envelope" (NR 115.03(1p)) means the three dimensional space within which a structure is built. (Still used in Section 9 – Impervious surface section)

(4) "County zoning agency" (NR 115.03(2)) means that committee or commission created or designated by the county board under s. 59.69(2)(a), Stats, to act in all matters pertaining to county planning and zoning.

(5) "Department" (NR 115.03(3)) means the Department of Natural Resources.

(6) "Existing development pattern" (NR 115.03(3m)) means that principal structures exist within 250 feet of a proposed principal structure in both directions along the shoreline.

(7) "Floodplain" (NR 115.03(4)) 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.

(8) "Generally accepted forestry management practices" (NR 1.25(2)(b), Wis. Adm. Code) means forestry management practices that promote sound management of a forest. Generally accepted forestry management practices include those practices contained in the most recent version of the department publication known as Wisconsin Forest Management Guidelines and identified as PUB FR-226.

(9) "Impervious surface" (NR 115.03(4g)) means an area that releases as runoff all or a majority of the precipitation that falls on it. "Impervious surface" excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious. Roadways as defined in s. 340.01(54), Wis. Adm. Code, or sidewalks as defined in s. 340.01(58), Wis. Adm. Code, are not considered impervious surfaces.

(10) "Mitigation" (NR 115.03(4r)) means balancing measures that are designed, implemented and function to restore natural functions and values that are otherwise lost through development and human activities.

(11) "Navigable waters" (NR 115.03(5)) 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. 281.31(2)(m), Stats, notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Stats, and ch. NR 115, Wis. Adm. Code, do not apply to lands adjacent to:

- (a) Farm drainage ditches where such lands are not adjacent to a natural navigable stream or river and such lands were not navigable streams before ditching; and
- (b) Artificially constructed drainage ditches, ponds or stormwater retention basins that are not hydrologically connected to a natural navigable water body

(12) "Ordinary high-water mark" (NR 115.03(6)) 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.

(13) "Regional flood" (NR 115.03(7)) 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.

(14) "Routine maintenance of vegetation" (NR 115.03(7m)) means normally accepted horticultural practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.

(15) "Shoreland" (NR 115.03(8)) 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.

(16) "Shoreland setback" also known as the "Shoreland setback area" in s. 59.692(1)(bn), Stats, means an area in a shoreland that is within a certain distance of the ordinary high-water mark in which the construction or placement of structures has been limited or prohibited under an ordinance enacted under section 59.692, Stats.

(17) "Shoreland-wetland district" (NR 115.03(9)) means a zoning district, created as a part of a county zoning ordinance, comprised of shorelands that are designated as wetlands on the Wisconsin wetland inventory maps prepared by the department.

(18) "Special exception (conditional use)" (NR 115.03(10)) 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.

(19) "Structure" (s.59.692(1)(e), Stats) means a principal structure or any accessory structure including a garage, shed, boathouse, sidewalk, walkway, patio, deck, retaining wall, porch or firepit.

(20) "Unnecessary hardship" (NR 115.03(11)) 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.

(21) "Wetlands" (NR 115.03(13)) 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.

**Blank Page**