

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

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Model County
SHORELAND ZONING ORDINANCE

Statutory References and Policy Options

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. Additionally, this document contains text referencing policy options in Appendix A. These policy options are not required under NR 115 or Ch. 59 of the Wisconsin Statutes, but are provided as suggestions for counties in the effective implementation of their shoreland zoning ordinance.

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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 Code, was repealed and recreated in November 1980 to include wetland protection in shoreland areas.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 boathouses 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))

See Policy Option in Appendix B

(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))

See Policy Option in Appendix B

(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 (1), 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 <http://dnrmaps.wi.gov/SL/Viewer.html?Viewer=SWDV&runWorkflow=Wetland>

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 adopted as part of this ordinance 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.

See Policy Options in Appendix B

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.

See Policy Option in Appendix B

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.

See Policy Options in Appendix B

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.

See Policy Options in Appendix B

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.

See Policy Option in Appendix B

(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).

See Policy Option in Appendix B

- (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, 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.

See Policy Option in Appendix B

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.

See Policy Option in Appendix B

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. County impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface on a riparian lot or parcel and any nonriparian lot or parcel that is located entirely within 300 feet of the ordinary high-water mark of any navigable waterway.

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.

See Policy Option in Appendix B

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.

[See Policy Option in Appendix B](#)

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.

Note: NR115.05(1)(b)1m lists structures that are exempt from the shoreland setback. These structures are considered conforming structures and are not considered nonconforming structures. Structures that were granted variances or illegally constructed structures are not considered nonconforming structures.

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 15,

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 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.

See Policy Options in Appendix B

Note: Each county must select a mitigation system and codify that system in this ordinance that states the exact requirements. There are samples in Appendix C and there is a sample affidavit to the Register of Deeds in Appendix D. 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>.

14.0 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. A copy of applications shall be required to be filed in the office of the county zoning administrator, 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.

See Policy Option in Appendix B

15.0 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)(d), 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.

See Policy Options in Appendix B

Appendix A

Background Information Regarding Impervious Surfaces and General Suggestions for Implementing Impervious Surface Standards

The recodification of Chapter NR 115, Wis. Adm. Code in 2010 and again in 2014, creates impervious surface limits for riparian lots or parcels and lots or parcels that are entirely within the first 300 feet of the shoreland zone.

In that impervious surface standards will be new to many counties, the following information is being provided to help 1) better understand the reason and need for impervious surface standards and 2) shape policy options, ordinance revisions and hopefully ease some implementation concerns. In addition to reviewing this information the department also recommends each county, particularly those that have not had impervious surface limits in the past, to contact one or more of the 21 counties that currently limit impervious surfaces on shoreland lots. These counties could provide advice and insight on how their impervious surface limits were incorporated into their permitting system, impacts on staff workload and public outreach tools. To see which counties had impervious surfaces limits as of 2010 and the language in each ordinance, see

<http://www.wisconsinlakes.org/attachments/article/16/CountyImpvSurfaceMitigationOrdinanceExamples.pdf>

Background Information

Impervious surfaces are hard surfaces, such as roofs, concrete, and asphalt that increase the amount and velocity of runoff to our lakes and rivers. The increase in runoff results in greater fluctuations in water levels, causes erosion, and transports sediment and pollution to our waterways.¹ It has been shown that a one acre parking lot generates sixteen times the runoff produced by one acre of undeveloped land.² Studies have shown that the consequences of impervious surfaces are degradation of aquatic habitat and an overall reduction in fish diversity.³

Over 20 years ago researchers found that aquatic insect diversity drops sharply in streams where the impervious surfaces in a watershed exceeded 10 to 15%.⁴ Fine sediments from impervious surfaces have negatively impacted fish spawning, egg incubation and fry rearing in a study of 47 warm water streams in southeast Wisconsin.⁵ The study found that fish and insect populations declined dramatically when

¹ Center for Watershed Protection. 2003. Impacts of Impervious Cover on Aquatic Systems: Watershed Protection Research Monograph. Center for Watershed Protection, Ellicott City, MD. Pages 1-158.

² Schueler, T.R. 1994. The importance of imperviousness. *Watershed Protection Techniques*. 1:100-11. 1994a. Available at <http://stormwatercenter.net/Practice/1-Importance%20of%20Imperviousness.pdf>.

Masterson, J. P., Bannerman, R. T., Impacts of stormwater runoff on urban streams in Milwaukee County, Wisconsin. *National Symposium on Water Quality-American Water Resources Association*. 1994.

The importance of imperviousness. *Watershed Protection Techniques* 1:100-11, available at <http://stormwatercenter.net/Practice/1-Importance%20of%20Imperviousness.pdf>.

³ Center for Watershed Protection. 2003. Impacts of Impervious Cover on Aquatic Systems: Watershed Protection Research Monograph. Center for Watershed Protection, Ellicott City, MD. Pages 1-158.

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

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

impervious surfaces exceed about 8-10% of the watershed, and streams with more than 12% imperviousness were shown to have consistently poor fish communities.⁶ The last page of this document contains a diagram, which further illustrates the negative impacts of impervious surfaces on fish communities. Other studies have also shown that urban development, including the impervious surfaces associated with it, results in declines of pollution-sensitive invertebrate groups such as mayflies, stoneflies, and caddisflies and a pronounced increase in pollution tolerant groups, such as midges and oligochaetes, in other words aquatic worms.⁷

Additional studies have shown that while the shift from agricultural to residential land uses reduces the rate of erosion into a lake, nutrient loading can actually increase with the development of the lakeshore.⁸ It is significant to note that a study of Lac La Belle, in Waukesha County, showed that the water quality benefits associated with installation of sewer service to lakefront subdivisions were offset by increases in nutrient loading and habitat degradation from lakefront development, resulting in a decline in water quality.⁹ Research over the past 15 years shows a strong correlation between the amount of impervious surface in a watershed and the health of the receiving stream¹⁰ with degradation of stream water quality and habitat as watersheds become more densely developed.¹¹

Therefore, to offset the impacts from impervious surfaces and prevent further impacts from development of Wisconsin's shoreland zones, the statewide minimum standards under NR 115 contain provisions to protect our waterways and require the implementation of a shoreland mitigation plan.

PROVISIONS IN NR 115

APPLICABILITY & DEFINITION

While statutorily shoreland zoning applies to any land within 1000 feet of the a lake and 300 feet of a navigable stream or river, the impervious surface standards in NR 115.05(1)(e), Wis. Adm. Code are only applicable to riparian lots and parcels or lots and parcels that are located entirely within 300 feet of the ordinary high water mark. Further, the definition of an impervious surface in NR 115.03(4g) identifies areas that release as runoff "all or a majority of the precipitation that falls on it" and the typical structures located on shoreland lots that would be considered impervious. However, while the definition lists such things as "rooftops, sidewalks, driveways, parking lots and streets" as impervious, it does provide that even these typical impervious surfaces could be considered pervious if the areas are "specifically designed, constructed and maintained to be pervious." Pervious surfaces are those that are designed, constructed and maintained to infiltrate a majority of the precipitation that falls on it. Pervious surfaces are further discussed later in this appendix.

GENERAL IMPERVIOUS SURFACE STANDARD

The general impervious surface standard in NR 115.05(1)(e)2. and 3.a., Wis. Adm. Code, is the standard that will apply to most shoreland areas in the state, unless a county develops an ordinance incorporating

⁶ Id. .

⁷ Jones, R.C. and Clark, C.C., Impact of watershed urbanization on stream insect communities. *Water Resources Bulletin* 23:1047-55. 1987, Lenat, D.R., Crawford, J.K., Effects of land use on water quality and aquatic biota of three North Carolina Piedmont streams. *Hydrobiologia*. 194: 185-99. 1994).

⁸ Garrison, P. Lake Ripley paleoecological study. Wisconsin Department of Natural Resources. 1993

⁹Garrison, P. Wisconsin Department of Natural Resources, letter to L. Conley, Sept. 6, 1995

¹⁰ Arnold, C. L., Gibbons, C. J., Impervious Surface Coverage: The emergence of a key environmental indicator. *Journal of American Planning Association*. 62(2): 243-258.1996

¹¹ Schueler, T. R., The importance of imperviousness. *Watershed Protection Techniques*.1:100-11.1994a. Available at <http://stormwatercenter.net/Practice/1-Importance%20of%20Imperviousness.pdf>. Masterson, J. P., Bannerman, R. T., Impacts of stormwater runoff on urban streams in Milwaukee County, Wisconsin. *National Symposium on Water Quality-American Water Resources Association*. 1994.

the highly developed shoreland standards as described below. The general impervious surface standard in NR 115 would allow a property owner to increase the impervious surfaces on the property up to 15%. However, if the property owner proposes to exceed 15% and add more impervious surface to the property, then the property owner must obtain a permit that includes a mitigation plan. Property owners may increase their impervious surfaces on their property up to 30%, unless the impervious surfaces are treated, which will be described below, or the property owner obtains a variance from the Board of Adjustment or Board of Appeal.

HIGHLY DEVELOPED SHORELINE IMPERVIOUS SURFACE STANDARD

An option exists for a county to designate highly developed shorelines in regard to impervious surface standards. The highly developed shoreline (HDS) impervious surface standards in NR 115.05(1)(e)2m. and 3.b., Wis. Adm. Code, were established to reduce the administrative burden of implementing and the need for variances from the general impervious surface standard for shorelines that are already highly developed and would struggle to meet the general impervious surface standard.

The HDS impervious surface standard in NR 115 would allow a property owner to increase the impervious surfaces on the property up to 30% for residential lots and 40% for commercial, industrial or business land uses without obtaining a permit. However, if the property owner proposes to exceed the 30% or 40% limit and increase the impervious surfaces on the property, then the property owner would have to obtain a permit from the county and submit and implement a shoreland mitigation plan.

IDENTIFICATION OF HIGHLY DEVELOPED SHORELINES

In developing a shoreland ordinance that incorporates the standards for a highly developed shoreline, the county will have to establish a map showing those shorelines determined to be highly developed. The simplest areas to designate as highly developed shorelines are those areas within a county that are shown to be an Urbanized Area or Urban Cluster in the 2010 US Census. The 2010 US Census maps, with the Urbanized Area and Urban Cluster layers are available at <http://tigerweb.geo.census.gov/TIGERweb2010/>.

Other areas that will require little effort for the counties to designate as highly developed are those shorelines where the county has land use maps that show shorelines are currently developed in commercial, business or industrial land uses and lakes that are served by a sewerage system. It is important to note that a sewage system does not include the plumbing inside of the building or the plumbing connecting the building to a private sewage treatment system but it means a system of pipes, conduits and other structures whose purpose is to collect, treat, and dispose of sewage, typically constructed by a public entity. If there are additional areas that a county would like to classify as highly developed and that do not meet any of the previously mentioned options, counties could still classify those areas as highly developed if the shoreline is at least 500 feet in length and a majority (>50%) of its lots are already developed with more than 30% of impervious or the majority of the lots are 20,000 square feet or less.

EXISTING IMPERVIOUS SURFACE STANDARD

Recognizing that many shoreland properties are currently developed, the existing impervious surface provisions under NR 115.05(1)(e)4. allow property owners to maintain and repair existing areas of impervious surface. Property owners may also replace existing impervious surfaces with a similar impervious surface of the same three dimensional size or relocate or modify an existing impervious surface, as long as it does not result in an increase in impervious surfaces on the property and the structure meets the shoreland setbacks. It is important to note that the provisions for existing impervious surfaces under NR 115 are not stand alone provisions and any structure, which is maintained, replaced, or otherwise modified, must comply with all other provisions in the county ordinance.

TREATED IMPERVIOUS SURFACE STANDARD

When calculating the impervious surfaces on a lot, counties shall also exclude impervious surfaces where the property owner can show that the runoff from the impervious surface is being treated via a stormwater pond, constructed wetland, infiltration basin, rain garden, bioswale, or other engineered system. Additionally if the runoff from the impervious surface discharges to an internally drained pervious area that retains the runoff on or off the parcel to allow infiltration into the soil, counties may exclude those areas from the impervious surface limits. 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 can demonstrate that the runoff from an impervious surface is being treated consistent with the exemption will be considered pervious for the purposes of implementing the impervious surface standards. 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. The property will then need to be brought into compliance or mitigation will be necessary if the percentage of impervious surfaces does not exceed the maximum percentage allowed. Counties may require documentation by a certified engineer, soil and water conservation department and/or other quality person that these devices are designed and constructed to treat the runoff from an impervious surface. Additionally counties can require maintenance plans for those treatment systems, treatment devices or internally drained areas and may consider requiring recorded agreements to notify subsequent property owners of maintenance conditions.

SURFACES DESIGNED, CONSTRUCTED AND MAINTAINED TO BE PERVIOUS

In order for a surface to be considered pervious, it would have to infiltrate a majority of the precipitation that falls on it. There are a couple of ways a county could figure out if the proposed product meets the standards in NR 115. Whatever method is used, it should be clearly identified and explained in the ordinance.

The first is to require that an engineering analysis be completed using stormwater models. According to stormwater staff, this method might be the most accurate method of determining whether a proposed pervious product is infiltrating all or a majority of the runoff. This method would be expensive and quite rigorous for small areas such as patios. If interested in this method, the department can provide a link to appropriate guidance.

The second method to is to figure out how much average precipitation the county gets each year and then tell the contractor that the product must infiltrate either all of that precipitation or at least more than 50% of the precipitation. The contractor or property owner must provide proof of product claim and the conditions that must exist for the product to be effective. The soils that are present will also make a difference with regard to infiltration rate. Once a county determines the infiltration rate for that particular site, the county would merely compare the infiltration rate for that pervious product with the infiltration rate for the native soil. As long as the pervious product infiltrated as much as what the soil would have been capable of, then the product meets the intent of NR 115.

Websites that could be used to assist in utilizing this method are:

<http://www.crh.noaa.gov/mkx/climate/wipcpn.gif>

http://pubs.usgs.gov/wri/wri034250/pdf/wrir-03-4250_plate2.pdf

<http://websoilsurvey.nrcs.usda.gov/app/>

Surfaces that are designed to be pervious must be installed and maintained to manufacturer specifications, otherwise they are assumed not to function as pervious surfaces. The department highly recommends the county require a maintenance agreement in the ordinance to help ensure the surfaces remain pervious.

SUGGESTIONS FOR IMPLEMENTATION

REVIEW CURRENT PERMITTING SYSTEM

In the process of amending a county's shoreland zoning ordinance to incorporate the impervious surface standards, the department suggests that each county review its ordinance to identify when permits are currently required, the informational requirements for each permit and whether modification of the permitting system will be necessary to implement the impervious surface standards. Counties should evaluate whether there are foreseeable activities that would increase the impervious surfaces on a property, but would not currently require a permit from the County. A concern that has been expressed is that current ordinances often do not require a permit for the paving an existing driveway. Existing impervious surfaces, within the same footprint, can be resurfaced as long as all other ordinance provisions are met. For properties that do not currently have a driveway, a county may want to require a permit, especially if there is a concern that more than 15% of the property would be in impervious surfaces. Typically, if the property is vacant and construction is proposed, most counties already require building permits and the review of the impervious surfaces, including the addition of a driveway, could be incorporated into the process at the time building permits are issued. In other words, some type of administrative mechanism will need to be put in place so that the percentage of impervious surface can be tracked and approved/denied when proposed. This is to the county's benefit so that unintended violations do not occur based on a "nothing is required" approach.

Further, there are many instances where the impervious surface limits can be incorporated into a county's existing permitting processes or system without substantially modifying it. For example, if the current ordinance requires the submittal of a plat of survey or a site plan, then the survey or site plan could also be utilized to calculate the impervious surface limits on the parcel. Certainly, counties may have to modify their existing forms to allow for documentation of existing and proposed impervious surfaces, or require property owners to attach a form identifying areas of impervious surfaces and pervious surfaces, as well as internally drained areas. The WCCA NR 115 Guidebook provides example forms, which counties may utilize and require for permit submittals.

DETERMINE THE EXTENT OF THE IMPERVIOUS SURFACES LIMITS

As mentioned above the impervious surface standards are applicable to riparian lots or parcels or non-riparian lots or parcels that are entirely within 300 feet of the ordinary high water mark (OHWM).

The WCCA NR 115 Guidebook lists a number of options for counties to determine if the entire lot falls within 300 feet of the ordinary high water mark, see Chapter 2 starting on page 8. In addition to those options listed in the Guidebook, the department's surface water data viewer has a tool, which measures the rough approximate area of an object that counties could utilize in conjunction with the aerial photos to determine the extent of existing impervious surfaces on the lot. The link to the surface water data viewer is <http://dnr.wi.gov/topic/surfacewater/swdv/>. Additional websites, such as google maps, allow users to zoom to search by a property's address and contains tools to allow the measuring of distances, which could then be utilized to calculate the area of impervious surfaces on the lot. Each county will have to determine which option(s) would best suit their needs.

IDENTIFICATION OF IMPERVIOUS SURFACES

While the definition of an impervious surface in NR 115 provides a list of structures that would be considered impervious surfaces, it does not identify many of the other common structures that are typically found in shoreland zones such as retaining walls, children's play structures, decks, stairs, and swimming pools. In the process of amending a county ordinance to incorporate the impervious surface standards, it will be important for counties to discuss what will be identified as impervious. Reason dictates that certain minor structures should not be calculated when determining the impervious surfaces on a property. For example, certain structures such as fences, birdhouses, mailboxes, flagpoles and other such structure would be difficult for counties and the public to calculate the impervious surface area for each of these structures and the runoff that occurs from these structures is typically minimal. However, some other common structures, such as retaining walls, decks, stairs, children's play structures, and gravel driveways, will require some thought and consideration by the county.

Calculating the area of a retaining wall could be difficult depending upon the type of material and how the wall was constructed. It has been the policy of the shoreland zoning program since the 1980's that retaining walls are structures, and should only be constructed in the shoreland zone when determined necessary to reduce or control existing identified erosion or runoff problems. . Consequently, some counties may choose to exclude retaining walls from the calculations since those walls serve to reduce erosion and control runoff. Other counties may choose to include retaining walls in calculating impervious surfaces particularly, when previously built walls serve mainly as an aesthetic feature on the landscape.

Similarly, counties will have to determine if children's play structures should be calculated in determining the impervious surface limits on a property. In deciding whether to include children's play structures in the impervious surface calculations, the county should perhaps consider whether these structures are currently allowed within the shoreland setback and whether there is a difference between relatively small residential children's play structures and the larger more commercial looking children's play structures that are becoming more popular on the landscape.

MEASURING THE IMPERVIOUS SURFACES ON A PROPERTY

The WCCA NR 115 Guidebook lists a number of options for calculating the area of impervious surface, see Chapter 2 starting on page 8. Quite a few counties require surveys to be included in the application materials. A survey can continue to be utilized for all future projects by adding the % impervious surface proposed and authorized. Utilizing a survey option also ensures that all other ordinance requirements are being met. Sometimes property owners, especially new property owners, don't even realize a survey has been completed and is on file with Real Property Listing which is another resource that should be checked. *Additionally most counties now have good GIS tools and sometimes even an impervious surfaces layer.* Websites, such as google maps, allow users to zoom to search by a property's address and contains tools to allow the measuring of distances, which could then be utilized to calculate the area of impervious surfaces on the lot. It will be important to note if the aerial used is current. Each county will have to determine which option or options would best suit the needs of the county and its residents. In those counties where dense tree cover may limit the ability to calculate impervious surfaces based upon GIS or aerial photos, counties may wish to rely on one of the alternative options mentioned in the Guidebook.

CONSIDERATIONS

It is important to note that the impervious surface regulations and standards are not stand alone provisions that trump other regulations in the shoreland ordinance. Nonconforming structure standards, 200 square foot gazebo law, new construction setbacks and shoreland vegetation standards are all applicable in concert with impervious surface standards. For example, a lateral expansion might be allowed under the nonconforming provisions but may not meet the impervious surface standards. .

Appendix B

Policy Options

2.1 AREAS TO BE REGULATED.

Policy Option

(1) Within one thousand (1,000) feet of the ordinary high-water mark of navigable lakes, ponds or flowages. (NR 115.03(8)) Lakes, ponds or flowages in _____ County shall be presumed to be navigable if they are listed in the Wisconsin Department of Natural Resources publication FH-800 2009 "Wisconsin Lakes" book available electronically at the following web site: <http://dnr.wi.gov/lakes/lakebook/wilakes2009bma.pdf> or are shown on United States Geological Survey quadrangle maps (1:24,000 scale), or other zoning base maps.

(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)) Rivers and streams in _____ County shall be presumed to be navigable if they are designated as perennial waterways or intermittent waterways on United States Geological Survey quadrangle maps (1:24,000). 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

4.2 PLANNED UNIT DEVELOPMENT (PUD)

Policy Option

(3) PROCEDURE FOR ESTABLISHING A PLANNED RESIDENTIAL UNIT DEVELOPMENT DISTRICT. The procedure for establishing a Planned Residential Unit Development district shall be as follows:

- (a) Petition. A petition setting forth all of the facts required in section 4.2(2) shall be submitted to the _____ county clerk with sufficient copies to provide for distribution by the clerk.
- (b) Review and Hearing: The petition shall be submitted to the county zoning agency established as required by s. 59.69(3)(d), 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 office of the Department as described in Section 13.4(2) of this ordinance.
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.
- (c) 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 4.2(2). If the petition is granted in whole or in part, the county board shall attach such written conditions to the approval as are required by and consistent with Section 4.2(2). The conditions of approval shall in all cases establish the specific restrictions applicable with regard to minimum lot sizes, width, setbacks, dimensions of vegetative buffer zone and open space requirements.
- (d) Planning Studies. A landowner or petitioner may at his own expense develop the facts required to establish compliance with the provisions of Section 4.2(2) 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.

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

Policy Option

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. In calculating the minimum area or width of a lot, the beds of navigable waters shall not be included.

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.

Policy Option

(choose one of the following)

- (1) The width shall be calculated by averaging measurements at the following 3 locations:
 - (a) The ordinary high water mark.
 - (b) The building setback line.
 - (c) One other location on the lot within 300 feet of the ordinary high water mark.

or

- (1) The width shall be calculated by averaging the measurements at the following locations:
 - (a) The ordinary high water mark
 - (b) The building setback line
 - (c) The rear lot line

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 with at least 100 feet of frontage at the ordinary high-water mark.

Policy Option

(choose one of the following)

- (1) The width shall be calculated by averaging measurements at the following 3 locations:
 - (a) The ordinary high water mark.
 - (b) The building setback line.
 - (c) One other location on the lot within 300 feet of the ordinary high water mark.

or

- (1) The width shall be calculated by averaging the measurements at the following locations:
 - (a) The ordinary high water mark
 - (b) The building setback line
 - (c) The rear lot line

6.1 SHORELAND SETBACKS.

(1) EXEMPT STRUCTURES. (NR 115.05(1)(b)1m) 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.

Policy Option

1. The construction or placement of boathouses below the ordinary high-water mark of any navigable waters shall be prohibited.
 2. Boathouses shall be designed and constructed solely for the storage of boats and related equipment.
 3. One boathouse is permitted on a lot as an accessory structure.
 4. Boathouses shall be constructed in conformity with local floodplain zoning standards.
 5. Boathouses shall not exceed one story and _____ square feet in floor area.
 6. Boathouse roofs shall have a pitched roof that is no flatter than 4/12 pitch, and shall not be designed or used as decks, observation platforms or for other similar uses.
 7. Earth toned color shall be required for all exterior surfaces of a boathouse.
 8. The main door shall face the water.
 9. Patio doors, fireplaces and other features inconsistent with the use of the structure exclusively as a boathouse are not permitted.
- (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.

Policy Option

5. An enforceable affidavit must be filed with the register of deeds prior to construction acknowledging the limitations on vegetation.

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

Policy Option

7.3 CUTTING MORE THAN 35 FEET INLAND. From the inland edge of the 35 foot area to the outer limits of the shoreland, the cutting of vegetation shall be allowed when accomplished using accepted forest management and soil conservation practices which protect water quality.

8.0 FILLING, GRADING, LAGOONING, DREDGING, DITCHING AND EXCAVATING. (NR115.05(1)(d))

Policy Option

8.1 GENERAL STANDARDS. Filling, grading, lagooning, dredging, ditching or excavating which does not require a permit under section 8.2 may be permitted in the shoreland area provided that:

- (1) It is not done within the vegetative buffer zone unless necessary for establishing or expanding the vegetative buffer.
- (2) It is done in a manner designed to minimize erosion, sedimentation and impairment of fish and wildlife habitat.
- (3) Filling, grading, lagooning, dredging, ditching or excavating in a shoreland-wetland district meets the requirements of sections 3.32 and 3.33 of this ordinance.

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

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

8.2 PERMIT REQUIRED. Except as provided in section 8.3, a permit is required:

(1) For any filling or grading of any area which is within 300 feet landward of the ordinary high water mark of navigable water and which has surface drainage toward the water and on which there is either:

- (a) Any filling or grading on slopes of more than 20%.
- (b) Filling or grading of more than 1,000 sq. ft. on slopes of 12%-20%.
- (c) Filling or grading of more than 2,000 sq. ft. on slopes less than 12%.

(2) 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 high water mark of a navigable body of water or where the purpose is the ultimate connection with a navigable body of water.

8.3 PERMIT CONDITIONS. In granting a permit under section 8.2, the County shall attach the following conditions, where appropriate, in addition to those provisions specified in sections 13.2 or 13.4.

- (1) The smallest amount of bare ground shall be exposed for as short a time as feasible.
- (2) Temporary ground cover (such as mulch or jute netting) shall be used and permanent vegetative cover shall be established.
- (3) Diversion berms or bales, silting basins, terraces, filter fabric fencing, and other methods shall be used to prevent erosion.
- (4) Lagoons shall be constructed to avoid fish trap conditions.
- (5) Fill shall be stabilized according to accepted engineering standards.
- (6) Filling shall comply with any local floodplain zoning ordinance and shall not restrict a floodway or destroy the flood storage capacity of a floodplain.
- (7) 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.

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

9.6 TREATED IMPERVIOUS SURFACES. (NR115.05(1)(e)3m and s. 59.692(1k)(a)1.e) Impervious surfaces that can be documented to show 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 9.5 are an exemption from the impervious surface standards and as such

should be read construed narrowly. As such, a property owner is entitled to this exemption only when the runoff from the impervious surface is being treated by some type of treatment system, treatment device or internally drained. Property owners can demonstrate that the runoff from an impervious surface is being treated consistent with section 9.5 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 9.5.

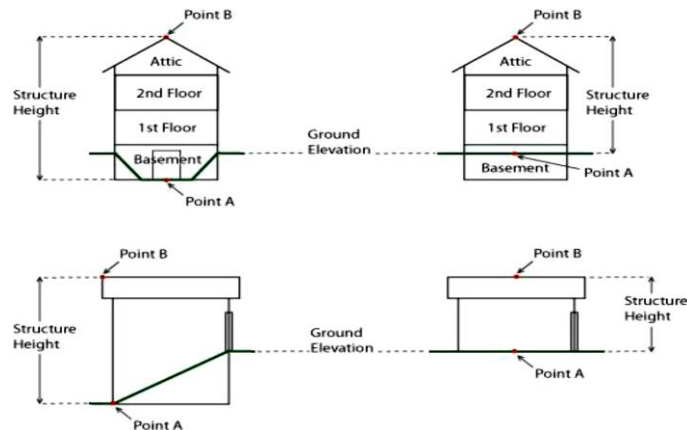
Policy Options

To qualify for the statutory exemption, property owners shall submit a complete permit application, that is reviewed and approved by the county. The application shall include 1) calculations showing how much runoff is coming from the impervious surface area; 2) documentation that the runoff from the impervious surface is being treated by a proposed treatment system, treatment device, or internally drained area; and 3) an implementation schedule and enforceable obligation on the property owner to establish and maintain the treatment system, treatment devices, or internally drained area. The enforceable obligations shall be evidenced by an instrument recorded in the office of the Register of Deeds prior to the issuance of the permit.

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.

Policy Options

10.1 Structure height is the measurement of the vertical line segment starting at the lowest point of any exposed wall and it's intersect with the ground (Point A in the following diagram) to a line horizontal to the highest point of a structure (Point B in the following diagram), unless specified under other sections of this code.



10.2 To protect and preserve wildlife habitat and natural scenic beauty, a county may not permit any construction that results in a structure outside of the 75 foot shoreland setback taller than _ _ feet.

12.0 MITIGATION. (NR 115.05 (1)(e)3, (g)5, (g)6) When the county issues a permit requiring mitigation under sections 9.4, 11.3, 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:

Policy Option

(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 prior to the issuance of the permit.

13.0 ADMINISTRATIVE PROVISIONS. (NR 115.05(4))

Policy Option

13.1 ZONING ADMINISTRATOR. (NR 115.05(4)) The zoning administrator shall have the following duties and powers:

(1) Develop and maintain a system of permits for new construction, development, reconstruction, structural alteration or moving of buildings and structures. A copy of applications shall be required to be filed in the office of the county zoning administrator.

(2) Regularly inspect permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.

(3) Develop and maintain 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.

(4) Develop and maintain a special exception (conditional use) procedure.

(5) Keep a complete record of all proceedings before the board of adjustment, zoning agency and planning agency.

(6) Provide written notice to the appropriate office of the Department at least 10 days prior to any hearing on a requested 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.

(7) Submit to the appropriate office of the Department, within 10 days after grant or denial, 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.

(8) Develop and maintain an official map of all mapped zoning district boundaries, amendments, and recordings.

(9) Establish 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.

(10) Pursue the prosecution of violations of the shoreland ordinance.

13.2 PERMITS.

(1) **WHEN REQUIRED.** Except where another section of this ordinance specifically exempts certain types of development from this requirement, a permit shall be obtained from the zoning administrator or board of adjustment/committee before any new development.

(2) APPLICATION. An application for a 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 information:

- (a) Name and address of applicant and property owner.
- (b) Legal description of the property and type of proposed use.
- (c) A to scale drawing of the dimensions of the lot and location of all existing and proposed structures and impervious surfaces relative to the lot lines, center line of abutting highways and the ordinary high-water mark of any abutting waterways.
- (d) Location and description of any existing private water supply or sewage system or notification of plans for any such installation.
- (e) Plans for appropriate mitigation when required.
- (f) Payment of the appropriate fee.
- (g) Additional information required by the zoning administrator.

(3) EXPIRATION OF PERMIT. Zoning permits shall expire (insert time) months from date issued if no substantial work has commenced.

(4) CERTIFICATES OF COMPLIANCE.

- (a) No land or building shall be occupied or used 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.
- (b) 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.
- (c) 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.

13.3 SPECIAL EXCEPTION PERMITS (OR CONDITIONAL USE PERMITS).

(1) 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 _____. To secure information upon which to base its determination, the _____ may require the applicant to furnish, in addition to the information required for a zoning permit, the following information:

- (a) A plan of the area showing surface contours, soil types, ordinary high-water marks, ground water conditions, subsurface geology and vegetative cover.
- (b) Location of buildings, parking areas, traffic access, driveways, walkways, piers, open space and landscaping.
- (c) Plans of buildings, sewage disposal facilities, water supply systems and arrangement of operations.
- (d) Specifications for areas of proposed filling, grading, lagooning or dredging.
- (e) Other pertinent information necessary to determine if the proposed use meets the requirements of this ordinance.

- (f) Rationale for why the proposed special exception meets all of the special exception criteria listed in the ordinance

(2) NOTICE, PUBLIC HEARING AND DECISION. Before deciding whether to grant or deny 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 _____, shall be given as a Class 2 notice under ch. 985, Wis. Stats. Such notice shall be provided to the appropriate office of the Department at least 10 days prior to the hearing. The _____ shall state in writing the grounds for granting or denying a special exception permit.

(3) STANDARDS APPLICABLE TO ALL SPECIAL EXCEPTIONS. In deciding a special exception application, the _____ shall evaluate the effect of the proposed use upon:

- (a) The maintenance of safe and healthful conditions.
- (b) The prevention and control of water pollution including sedimentation.
- (c) Compliance with local floodplain zoning ordinances and opportunity for damage to adjacent properties due to altered surface water drainage.
- (d) The erosion potential of the site based upon degree and direction of slope, soil type and vegetative cover.
- (e) The location of the site with respect to existing or future access roads.
- (f) The need of the proposed use for a shoreland location.
- (g) Its compatibility with uses on adjacent land.
- (h) The amount of liquid and solid wastes to be generated and the adequacy of the proposed disposal systems.
- (i) Location factors under which:
 - 1. Domestic uses shall be generally preferred;
 - 2. Uses not inherently a source of pollution within an area shall be preferred over uses that are or may be a pollution source; and
 - 3. Use locations within an area tending to minimize the possibility of pollution shall be preferred over use locations tending to increase that possibility. Additional standards such as parking, noise, etc...maybe refer to the applicable part of their ordinance.

(4) CONDITIONS ATTACHED TO SPECIAL EXCEPTIONS. 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. Upon consideration of the factors listed above, the _____ 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.

In granting a special exception permit, the _____ 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 affect the purpose of this ordinance.

(5) RECORDING. When a special exception permit is approved, an appropriate record shall be made of the land use and structures permitted. 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 office of the Department within 10 days after it is granted or denied.

(6) REVOCATION. Where the conditions of a special exception permit are violated, the special

exception permit shall be revoked.

13.4 VARIANCES.

(1) **VARIANCE CRITERIA TO BE MET.** The board of adjustment may grant upon appeal a variance from the standards of this ordinance where an applicant convincingly demonstrates that:

- (a) literal enforcement of the provisions of the ordinance will result in unnecessary hardship on the applicant;
- (b) the hardship is due to special conditions unique to the property;
- (c) the request is not contrary to the public interest; and
- (d) the request represents the minimum relief necessary to relieve unnecessary burdens.

(2) **NOTICE, PUBLIC HEARING AND DECISION.** (s. 59.694(6), Stats) Before deciding 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, Stats. Such notice shall be provided to the appropriate 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 office of the Department within 10 days of the decision.

13.5 **BOARD OF ADJUSTMENT.** (s. 59.694 Stats) The county executive, county administrator or chair of the county board shall appoint a board of adjustment consisting of 3 or 5 members under s. 59.694, Stats. The county board shall adopt such rules for the conduct of the business of the board of adjustment as required by s. 59.694(3), Stats.

(1) **POWERS AND DUTIES.** (s. 59.694 Stats)

- (a) 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. 59.694, Stats.
- (b) It shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement or administration of this ordinance.
- (c) It shall hear and decide applications for special exception permits pursuant to section 13.3.
- (d) It may grant a variance from the dimensional standards of this ordinance pursuant to section 13.4.
- (e) In granting a 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.

(2) **APPEALS TO THE BOARD.** (s. 59.694 Stats) 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 other administrative officer. Such appeal shall be made within 30 days, 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.

(3) **HEARING APPEALS AND APPLICATIONS FOR VARIANCES AND SPECIAL EXCEPTION PERMITS.** (s. 59.694(6), Stats)

- (a) 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, 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 provided to the appropriate 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.

- (b) 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 provided to the appropriate office of the Department within 10 days after they are granted or denied.
- (c) 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. **The final disposition of an appeal or application to the board of adjustment shall be in the form of a written decision document signed by the chairman and secretary of the board. The decision document shall either affirm, deny, vary or modify the appeal and list the specific reasons for the determination.**
- (d) At the public hearing, any party may appear in person or by agent or by attorney.

13.6 ~~FEES~~. (ss. 59.69, 59.694, 59.696, 59.697, Stats) The county board may, by resolution, adopt fees for the following:

- (1) Zoning permits.
- (2) Certificates of compliance.
- (3) Planned Unit Development reviews.
- (4) Public hearings.
- (5) Legal notice publications.
- (6) Special exception permits.
- (7) Variances.
- (8) Administrative appeals.
- (9) Other duties as determined by the county board.

13.7 CHANGES AND AMENDMENTS. The county board may from time to time, alter, supplement or change the regulations contained in this ordinance in accordance with the requirements of s. 59.69(5)(e), Stats., NR 115, and this ordinance where applicable.

(1) AMENDMENTS. Amendments to this ordinance may be made on petition of any interested party as provided in s. 59.69(5), Stats.

(2) SHORELAND WETLAND MAP AMENDMENTS. (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 provided to the appropriate office of the Department within 10 days after the decision is issued.

13.8 ENFORCEMENT AND PENALTIES. (NR 115.05(4)(j)) 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. 59.69(11), Stats.

(1) PENALTY. Any person, firm or corporation, including those doing work for others, who violates any of the provisions of this Ordinance shall be subject to a forfeiture of not less than \$50.00 nor more than \$500.00 for each violation plus the cost of prosecution. Each day a violation exists shall constitute a distinct and separate violation of this Ordinance and as such, forfeitures shall apply accordingly. The Zoning Administrator shall refer violations to the Corporation Counsel who shall prosecute violations.

(2) INJUNCTION. Any use or action which violates the provisions of this Ordinance shall be subject to a court injunction prohibiting such violation.

(3) RESPONSIBILITY FOR COMPLIANCE. It shall be the responsibility of the applicants as well as their agent or other persons acting on their behalf to comply with the provisions of this Ordinance. Any person, firm or corporation, causing a violation or refusing to comply with any provision of this Ordinance will be notified in writing of such violation by the County Zoning Administrator or his designated Zoning Deputy. Each day a violation exists shall constitute a distinct and separate violation of this ordinance and, as such, forfeitures shall apply accordingly. 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 Section 59.69(11), Stats.

(4) SUSPENSION OF PERMIT. Whenever the Zoning Administrator, Assistant Zoning Administrator or Deputy Zoning Administrator, determines there are reasonable grounds for believing there is a violation of any provision of this Ordinance, the Zoning Administrator, Assistant Zoning Administrator or Deputy Zoning Administrator shall give notice to the owner of record as hereinafter provided. Such notice shall be in writing and shall include a statement of the reason for the suspension of the permit. It shall allow 30 days for the performance of any act it requires. If work cannot be completed in the 30 day period, an extension may be granted if reason of hardship prevail and can be verified. Such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been sent by registered mail to owner's last known address or when the owner has been served by such notice by any method authorized by the laws of Wisconsin. The owner of record has the right to appeal any decision by the Zoning Administrator, Assistant Zoning Administrator or Deputy Zoning Administrator or apply to the Vilas County Board of Adjustment for a Variance from the strict rule of the Ordinance within 30 days of receipt of a notice or order.

(5) EMERGENCY CONDITIONS. Whenever the Zoning Administrator finds that an emergency exists such as sudden, unexpected occurrences or combinations thereof, unforeseen conditions or circumstances at the time beyond one's control, adverse weather conditions, meeting a timetable which requires immediate action to protect the public health, safety and welfare, the Administrator may, without notice or hearing, issue an order citing the existence of such emergency and may require that such action be taken as may be deemed necessary to meet the emergency. The Administrator shall notify the Chairperson of the Zoning Committee within 24 hours of such situations. Notwithstanding any other provisions of this Ordinance such order shall become effective immediately. Any person to whom such order is directed shall comply therewith immediately. Appeals or challenges to emergency orders may be brought after emergency conditions have ceased, to the Board of Adjustment.

14.0 DEFINITIONS.

Policy Options

Although not defined in NR 115 or corresponding statutes, the following terms and suggested definitions are provided by the Department as recommendations for the effective implementation of a shoreland zoning ordinance.

“Accessory structure” means a subordinate structure on the same property as the principal structure which is devoted to a use incidental to the principal use of the property. Accessory structures include, but are not limited to, detached garages, sheds, barns, gazebos, patios, decks, swimming pools, hot tubs, fences, retaining walls, driveways, parking lots, sidewalks, detached stairways and lifts.

“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.

“Footprint” means the land area covered by a structure at ground level measured on a horizontal plane. The footprint of a residence or building includes the horizontal plane bounded by the furthest exterior wall and eave if present, projected to natural grade. For structures without walls (decks, stairways, patios, carports) – a single horizontal plane bounded by the furthest portion of the structure projected to natural grade. Note: For the purposes of replacing or reconstructing a nonconforming building with walls, the footprint shall not be expanded by enclosing the area that is located within the horizontal plane from the exterior wall to the eaves projected to natural grade. This constitutes a lateral expansion under NR 115 and would need to follow NR 115.05 (1)(g)5..

“Lot” means a continuous parcel of land, not divided by a public right-of-way, and sufficient in size to meet the lot width and lot area provisions of this ordinance.

“Lot area” means the area of a horizontal plane bounded by the front, side, and rear lot lines of a lot, but not including the area of any land below the ordinary high water mark of navigable waters.

“Previously developed” means a lot or parcel that was developed with a structure legally placed upon it.

“Lot of record” means any lot, the description of which is properly recorded with the Register of Deeds, which at the time of its recordation complied with all applicable laws, ordinances, and regulations.

“Substandard Lots” means a legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current requirements for a new lot.

“Variance” 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.

Appendix C

Mitigation Methods Being Used by Wisconsin Counties

In developing the mitigation requirements in a shoreland zoning ordinance, counties should keep in mind that mitigation measures must be proportional to the impacts of the permitted activity and must be enforceable under NR 115. Additionally, counties may not solely require vegetative buffer restoration but may include that as an option amongst other practices.

Because many of the mitigation methods that were previously listed in the model ordinance are obsolete due to the requirement of a vegetative buffer they have been omitted from the document.

Please refer to the WCCA NR 115 Guidebook for mitigation options and examples.

Appendix D

Sample Affidavit Recording For Shoreland Mitigation

LAND USE PERMIT AFFIDAVIT

Land Use Permit No.	This agreement is made between the Government Unit and the Real Property owner(s)
Governmental Unit County Zoning Administration	Date:
Tax Key Nos. : Parcel # PIN #	Real Property owner(s): YYYYY
<p>We, the Real Property owner(s) acknowledge that the Land Use Permit applies to the following property (legal description, attach separate sheet if necessary):</p> <p>Lot 1 of Certified Survey Map No. 2242; located in part of Government lot 3, T35N-R7E in the Town of ***, ***, ***** County, Wisconsin.</p>	
Return to: ***** County Zoning Administration	

As an inducement to ***** County to issue a Land Use Permit for the above described property, we agree to the following:

1. Owner(s) agree to conform to the conditions of the aforementioned Land Use Permit. If these conditions are not met ***** County does have the right to revoke said Permit. Owner(s) agrees that removal of the structures authorized by the Land Use Permit will not void this agreement or the conditions placed hereon.
2. Said Permit shall remain and be preserved upon this described property in perpetuity.
3. Owner(s) agree to allow authorized representatives of ***** County to enter upon the owner's property at the above description to inspect the structure(s) authorized by permit and to determine if agreed conditions are being met.
4. This agreement shall be binding upon the owner(s), their heirs, successors and assigns. The owner(s) shall submit this agreement & recording fee to the ***** County Zoning Administration, and the agreement shall be recorded by the Register of Deeds in a manner which will notify any individual referencing the deed to the property as to the existence of this agreement.

Land Use Permit # ***** is conditionally granted for the purpose of _____ . Upon inspection the Zoning Department determined that mitigation is required for *****. The owners have agreed to the following conditions to authorize the project:

- 1.) Actively restore and maintain the shoreland buffer to a depth of ** feet from the ordinary high water mark for the entire shoreline frontage, mowing, trimming, and raking is not allowed within the shoreland buffer.

All heirs and assigns of this property are bound and obligated to maintain the aforementioned mitigation.

Owner's Name(s) – Please Print: YYYYYYYY	Subscribed & sworn to before me on this date:	Governmental Unit Official Name – Please Print:
	Notary Public (Printed or Typed):	Governmental Unit Official Title – Please Print:
Notarized Owner(s) Signature(s):	Notary Public (Signature):	Governmental Unit Official Signature:
	My Commission Expires:	

LAND USE PERMIT AFFIDAVIT INSTRUCTIONS:

ORIGINAL FORM MUST BE COMPLETED AND SIGNED IN INK OR IT WILL NOT BE ACCEPTED. IT MUST BE LEGIBLE AND COMPLETE OR IT WILL BE RETURNED.

1. The document number space and the box in the top right must be left blank for Register of Deeds use. ALL OTHER BOXES MUST BE COMPLETED.
2. Be sure the correct tax parcel numbers are referenced.
3. The date will be filled in by the Zoning Department.
4. Print or type the property owner(s)' name as it appears on the deed. (all owner's listed on this affidavit must sign in the presence of a notary)
5. Fill in the legal description exactly as it appears on the most recent deed. If space is insufficient in area provided, you must attach a rider. *If the legal has been filled in by the Zoning Department it is your responsibility to review it completely and make sure that it is correct.*
6. Please read through the agreement completely.
7. The Governmental Unit Official information must be completed by the Zoning office.

THE ORIGINAL MUST BE RETURNED TO THE ZONING OFFICE WITH A RECORDING FEE OF \$*** for the 1st page and \$*** for each additional page.

Checks payable to: ***** County. After this agreement has been recorded, the original will be returned to you for your records/reference.

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