Form 1100-001
(R 9/07)

NATURAL RESOURCES BOARD AGENDA ITEM

Item No. 2.A.2

SUBJECT: Adoption of Board order WT-28-04, revisions to NR115, Wisconsin's Shoreland Management Program

FOR: NOVEMBER 2009 **BOARD MEETING**

TO BE PRESENTED BY: Todd Ambs and Russ Rasmussen

SUMMARY:

In June 2009, the Natural Resources Board adopted updated minimum statewide shoreland zoning standards for Wisconsin. The Assembly Natural Resources Committee requested modifications. In response, the following revisions are proposed:

- Impervious surface standards apply within 300 feet of the ordinary high water mark (rather than 1000 feet). Impervious surface allowances are based on calculating the amount as a percentage of the lot within 300 feet of the ordinary high water mark.
- Structures legally placed between 35 - 75 feet of the ordinary high water mark prior to adoption of the original county shoreland ordinance may only be expanded vertically (no horizontal expansion within the shoreland setback).
- Mitigation plans must be enforceable and must be recorded in the office of the Register of Deeds (no previous requirement).
- Clarification that pre-existing impervious surfaces may be maintained, replaced or relocated but relocation or replacement must meet all other ordinance provisions (e.g., for example, an existing at grade impervious patio that does not meet the shoreland setback may not be moved closer to the water or converted to a building.)
- Technical change to ensure accurate awareness and application of statutory provisions related to shoreland zoning for annexed and newly-incorporated areas.

While these modifications result in limits on impervious surfaces over a smaller proportion of lake watersheds, the footprint of pre-existing structures may no longer be expanded within the shoreland setback and mechanisms to help ensure that mitigation is accomplished have been strengthened. All other provisions remain as adopted by the Board in June 2009. In sum, the Department has determined that there is no change to the environmental impact of the proposal.

RECOMMENDATION: Adopt Board order WT-28-04 relating to the Shoreland Management Program

LIST OF ATTACHED MATERIALS:

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

APPROVED:

Liesa Lehmann for
Bureau Director, Russell Rasmussen — Date 11-6-09

Administrator, Todd Ambs — Date 11/5/09

Secretary, Matt Frank — Date 11/6/09

cc: Laurie J. Ross - AD/8
Julia Riley, WT/3
Gregg Breese, WT/4
Liesa Lehmann, WT/4

CORRESPONDENCE/MEMORANDUM

State of Wisconsin

DATE: November 6, 2009

TO: Natural Resources Board

FROM: Matthew Frank

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

In June 2009, the Natural Resources Board adopted updated minimum statewide shoreland zoning standards for Wisconsin. The Assembly Natural Resources Committee requested modifications. In response, the following revisions are proposed:

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- Mitigation plans must be enforceable and must be recorded in the office of the Register of Deeds (rather than no previous requirement).
- Clarification that pre-existing impervious surfaces may be maintained, replaced or relocated but relocation or replacement must meet all other ordinance provisions (e.g., for example, an existing at grade impervious patio that does not meet the shoreland setback may not be moved closer to the water or converted to a building.)
- Technical change to ensure accurate awareness and application of statutory provisions related to shoreland zoning for annexed and newly-incorporated areas.

While these modifications result in limits on impervious surfaces over a smaller proportion of lake watersheds, pre-existing structures may no longer be expanded horizontally within the shoreland setback and mechanisms to help ensure that mitigation is accomplished have been strengthened. All other provisions remain as adopted by the Natural Resources Board in June 2009. In sum, the Department has determined that there is no change to the environmental impact of the proposal.

Why is this rule revision being proposed?

Wisconsin's minimum shoreland zoning standards (NR 115) were originally written in the 1960's and have been revised very little since that time. Development patterns have changed significantly from a small, older family cottage to year round homes and multi-unit complexes with sizes proportionate to the high value of the shoreline property. Since the initial writing, most counties have elected to create ordinances that go beyond the minimum standards but are looking for up-to-date statewide minimums to make these protective measures more consistent. In the years that shoreland zoning has been in place, extensive scientific research has show that easily-implementable up-to-date minimum standards are critical to protecting Wisconsin lakes and streams.

The current proposal is a simplified code that recognizes the science of shoreland protection, the value of waterfront property, the past work that counties have put into creating and enforcing shoreland zoning ordinances, the desire for flexibility in development coupled with the demand that the current levels of

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protection not be reduced.

The proposal follows some key basic principles:

- Property owners may maintain existing buildings and lawns.
- For new building, reconstruction or expansion, property owners will need to either save some space for fish and wildlife habitat and runoff absorption - or restore habitat or runoff absorption – in proportion to the project.

Many familiar standards are unchanged, including the 75 foot setback and the 10,000 and 20,000 square foot lot sizes.

Construction that pre-dates shoreland zoning and doesn't meet the standards (non-conforming structures) has been problematic because of administrative complexity and inconsistent treatment from county to county. The majority of variance applications are related to modifying existing nonconforming structures and lots. In order to reduce the frequency of variance requests from the same zoning provisions experts recommend modification of the provisions if possible.

Many local governments, lake and river groups, and lanscapers, as well as state agencies, now use and recommend modern water quality and habitat management practices to landowners that are not reflected in the old shoreland standards. As an example, the old standards do not reflect the need to control invasive species – a need that was largely unknown at the time of original adoption.

DNR has developed a comprehensive approach to shoreland management, of which regulation is one element. DNR property managers evaluate the condition of shoreland habitat on state lands and as needed restore shoreline features at several properties each year. Educational materials and programs, including sites demonstrating sound shoreland practices, are widely available through DNR, UW-Extension, county offices, and local lake and river groups. $775,000 is available annually in lake and river grants specifically to support local governments and organizations with education and incentive programs.

What event or action triggered the proposal?

Revisions to the minimum shoreland zoning standards have been under discussion since 1988. Local evaluations twenty years after adoption were corroborated by a formal comprehensive study in 1997 that found that the minimum standards in the code were difficult to understand and were not being implemented in a manner to protect fish and wildlife habitat, natural scenic beauty and water quality. Many of the basic standards were unchanged since originally adopted nearly 40 years ago. An extensive review of modern scientific literature about fish and wildlife habitat requirements, prevention and control of water pollution, and preservation of shore cover for natural scenic beauty, concluded that to meet the statutory objectives of the program, improved minimum standards were needed for shoreland ordinances.[1]

Research findings support the rule change as follows:

- Traditionally developed shorelines (less vegetation, more impervious surface) support 83-92% fewer aquatic species than shorelines with intact vegetative cover and absorptive surfaces
- Shoreland property continues to develop at an increasing rate; since 1960 about two-thirds of undeveloped lakes 10 acres or larger have developed and in the next 20 years all undeveloped

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

lakes not in public ownership could be developed. On rivers, average lots are half the size they were 20 years ago.

In addition, counties across the state had expressed frustration with the current minimum standards. Counties with existing standards sought more clarity and definition in the rules to enable consistent application across the state resulting in better lake and stream protection. They also sought more flexibility in the code so they could adopt more innovative regulatory programs. Some property owners also expressed frustration with the current minimum standards, including a perceived inequity in the application of the "50% rule" in regulating nonconforming structures and, in certain situations, frustration with the code's reliance on variances as the primary relief mechanism.

In addition to convening a long-standing Citizens Advisory Committee, the Department has held two series of public hearings and a public listening session on proposed rule changes. Several tens of thousands of comments were received at the public hearings. The proposed rule balances the wide range of the public comments.

What issues are addressed by this rule?

S. 59.692 Stats. requires counties to adopt zoning and subdivision regulations for the protection of shoreland areas. The DNR is required to create minimum standards and oversee county implementation of these standards to fulfill the state's duty to protect the public trust in navigable waterways.

Numerous studies, as described in the attached environmental assessment (EA), have documented the impact of development in the shoreland or riparian zone on the health of the waterbody itself.

The proposed rule revision addresses the issue of improving shoreland development standards to better protect water quality, fish and wildlife habitat, and natural scenic beauty in the face of modern development pressures. The revision also addresses calls for more certainty and flexibility for counties when amending shoreland zoning ordinances and property owners when applying for permits. These goals have remained constant throughout the entire rule revision process.

Revisions to the minimum standards address the inadequacies of the current minimum standards in achieving the statutory objectives of the program. As exemplified in the attachment, benefits to the environment include reduced storm water runoff and related pollutants and conservation of fish and wildlife habitat. The revision is also expected to address administrative problems with the current rule identified by county zoning staff and property owners.

Summary of rule

The Department, with input from the Citizens Advisory Committee, listening sessions (2003), first round of public hearings (2005), focus groups (2006), second round of public hearings (2007), and request for modifications from legislative committees, the Department has drafted the attached revision to ch. NR 115 to meet the statutory objectives of the program while providing certainty and flexibility to counties and property owners.

Major provisions of the proposal include adding definitions to the rule for clarity; providing exemptions for certain activities from shoreland setback and establishing impervious surface and mitigation standards that alter the regulation of nonconforming structures. These changes will decrease the number of variance

applications counties receive and allow landowners to undertake certain activities by obtaining a simple administrative permit from the county.

Highlights of substantive changes are summarized below.

Section NR 115.02 - Applicability

- Clarifies applicability of shoreland zoning to unincorporated areas annexed after 1982 and unincorporated areas incorporated after 1994.

Section NR 115.03 - Definitions

- Added definitions for "Access and viewing corridor", "Building envelope", "Existing development pattern", "Impervious surface", "Mitigation" and "Routine maintenance of vegetation".

Section NR 115.04 – Shoreland-Wetlands

- Language updated to reflect fact that after 1985 all preliminary Wisconsin Wetland Inventory maps had been adopted. Language now refers to the wetland map "amendment" process.
- Added timeframe for zoning wetlands as reflected in amended maps and zoning districts.
- Added provision to resolve discrepancies in map and field conditions.
- Amended "Rezoning shoreland-wetland districts" language to clarify communication between the counties, Department and Army Corps of Engineers.

Section NR 115.05 (1) - Renumbered and amended as "Establishment of Zoning Standards"

Section NR 115.05 (1)(a) – Minimum lot sizes

- Counties may allow development on a substandard lot if the lot is a legal lot of record that complied with the applicable lot size requirements in effect at the time the lot was recorded at the county register of deeds office and the proposed construction of a structure will comply with all other standards in the code and if:
  1. The lot was never combined with another lot through plat, survey, conveyance or other action; and
  2. The lot has never been developed with one or more structures placed wholly or partially on an adjacent lot.

Section NR 115.05 (1)(b) – Building setbacks

- Language is added to address structures exempted by other state or federal laws from the minimum setback standards.
- The construction of new dry boathouses is still exempted; however, a provision has been added that boathouses must be located within the access and viewing corridor, not provide human habitation nor contain plumbing.
- No building is allowed within the first 35 feet of the ordinary high-water mark.
- New "Existing development pattern" and "Access and viewing corridor" definitions support this standard.

Section NR 115.05 (1)(c) – Renamed "Vegetation"

- Routine maintenance of vegetation permitted in shoreland zone. Removal of trees and shrubs also is allowed if the trees and shrubs are exotic or invasive species, diseased or damaged, or an imminent safety hazard, but the removed trees and shrubs must be replaced with comparable species of native vegetation in the same area.
- Language governing management of shoreland vegetation in at least the first 35 feet from the OHWM is clarified, resulting in a more functional buffer protecting habitat and water quality.

- Other vegetation management permitted in the vegetated buffer zone with a county approved plan that requires erosion control; native, non-invasive species re-vegetation; maintenance and monitoring and enforceable restrictions.
- An access and viewing corridor that allows vegetation removal for the lesser of 30% of the shoreline or 200 feet wide is permitted in the buffer zone, and new boathouses must be located in this corridor.
- New "Routine maintenance of vegetation" and "Access and viewing corridor" definitions support this standard.

Section NR 115.05 (1)(d)- Filling, grading, lagooning, ditching and excavating
- These actions are permitted if also designed to minimize impairment to natural scenic beauty.

Section NR 115.05 (1)(e)– Impervious surfaces
- To achieve water quality, habitat and pollution protections counties must create standards that regulate the total percentage of impervious surface (IS) cover within 300 feet of the ordinary high water of any navigable waterway.
- The total impervious surface coverage allowance is 15%, but may be exceeded up to a maximum of 30% total if the county approves an enforceable mitigation plan that requires mitigation measures to be implemented and maintained. The mitigation requirements must be recorded with the register of deeds.
- For lots with more than the allowed percentage of impervious surface, the following is allowed: routine maintenance, replacement of at-grade impervious surfaces, and replacement or relocation as long as the preexisting impervious surface percentage is not exceeded and all other ordinance requirements are met.
- New "Impervious surface" and "Mitigation" definitions support this standard.

Section NR 115.05 (1)(f) – Height
- A new provision on structure height added to protect and preserve the natural scenic beauty of lake and riverine environments.
- Structures may not exceed 35 feet high within 75 feet of the ordinary high-water mark.

Section NR 115.05 (1)(g) – Nonconforming structures and uses
- Removed rule that discussed limiting the cost of changes to nonconforming structures to 50% of the equalized assessed value. Counties are still allowed to impose the 50% rule if they choose to do so, or they may address nonconformities via limits on impervious surface area and mitigation requirements.
- Allows continuation of lawful use and routine maintenance of nonconforming structures.
- Expansion of nonconforming structures is limited to vertical expansion up to the height limit, and requires mitigation to offset the impacts.
- Replacement or relocation of nonconforming principal structures within the shoreland setback is allowed if the county determines that the project:
    1. Meets all other ordinance provisions,
    2. Will not expand or relocate closer to the OHWM,
    3. Will remove all structures or portions thereof within 35 feet of OHWM,
    4. Has no other compliant building location options,
    5. Involves a principal structure that has not been abandoned in the past 12 months and
    6. Mitigation to offset the impacts is required.

- For expansion, replacement or relocation, the county must approve an enforceable mitigation plan, and the mitigation requirements must be recorded with the register of deeds.
- New "Mitigation" and "Building envelope" definitions support this standard.

Section NR 115.05 (4) - Adoption of Administrative and Enforcement Provisions

- In addition to notifying the department prior to any hearings on variances, special exception and conditional use permits, appeals for map or text interpretations, and decisions to amend map or text ordinances, counties must also submit to copies of permits to expand, replace or relocate nonconforming principal structures on request of the department

Section NR 115.06 (2) - Departmental Duties

- Provision added that after review and upon determining that the county shoreland ordinance and all of its amendments complies with s. 59.692, Stats., the Department shall issue a certificate of compliance to that effect.
- Counties with a non-compliant or no shoreland ordinance have 180 days to work with Department to draft a compliant shoreland ordinance.

How does this proposal affect existing policy?

The proposed revisions to NR 115 are consistent with past Department policy and guidance and Wisconsin case law. In many instances, the changes codify past guidance DNR has provided to counties. The proposed changes are based on past concerns raised by counties, comments received by the public at listening sessions and public hearings, and direction received from the Natural Resources Board when ch. NR 118 was approved.

The most substantial shift in policy is the Department's decision to cease reliance on the 50% rule and variances to address nonconforming structures. The new initiative involves three components: the new impervious surface section, the revised nonconforming use section and the requirement that mitigation or balancing measures compensate for impacts on the shoreland zone. This policy shift adds a new element to the traditional regulation of nonconforming structures.

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

This proposal recognizes that existing structures within the 75-foot setback usually were built in compliance with the standards in place at the time of construction, and property owners may have substantial investments in the improvements on their shoreland properties. While local governments may still include in their ordinances the goal of structure removal in the setback, the revised Department policy reflected in this proposed rule no longer seeks to require immediate removal of nonconforming structures under shoreland zoning law. However, under this proposal there are a number of options that require the impacts of existing structures within 75-feet to be controlled.

The minimum shoreland zoning requirements in NR 115 now focus on regulating the impacts of nonconforming structures based on how close they are to the water and the amount of land they cover. This new policy offers more options for development in the shoreland zone, but is not a concession to owners of nonconforming structures at the resource's expense. All options—removal, impervious surface

allowances, relocation or expansion pending a county permit, mitigation requirements, and variance provisions—have been carefully designed to meet the statutory requirements of water quality, habitat and natural scenic beauty protection. Under the current policy owners of nonconforming structures wishing to do more than ordinary repair and maintenance that costs more than 50% of their structure's equalized assessed value have only 2 options - (1) remove and relocate the nonconforming structure or (2) apply for a variance. While the new policy provides more options in dealing with nonconforming structures, it also seeks to reduce runoff to lakes and rivers from activities in the shoreland area by limiting impervious surfaces on all lots, requiring mitigation where triggered at least by restoring or protecting shoreland vegetation buffers.

Although the proposed rule still sets dimensional minimum standards, the new mitigation requirements reflect a major policy shift by providing options that counties may choose to adopt rather that relying on the 50% rule. The code relies on the definition of mitigation- "balancing measures to restore natural functions and values lost through development and human activities"- to set the bar for counties to devise locally appropriate mitigation standards. Because we are constantly learning more about how to limit human impacts on aquatic and wildlife ecosystems, it did not seem wise to codify static rules on how to mitigate. The proposed language will allow counties to amend their ordinances as new science and approaches emerge to select and define locally appropriate mitigation methods. The new standards will require counties as well as shoreland owners to make discerning choices about the impacts of proposed property improvements on the water, habitat and natural scenic beauty and take an active role in managing shorelands.

Outside of the codified rule, the Department will offer counties support in developing mitigation rules in several ways. A county may adopt an ordinance that requires property owners to utilize the Department developed computer program which has been determined adequate to balance the impacts of impervious surfaces and nonconforming structures. A county may decide to require full shoreland vegetation buffer restoration or establishment as mitigation. And, pending Departmental approval, counties currently implementing mitigation requirements via their ordinances may continue to use them. The Department plans to provide a model shoreland ordinance that will also provide mitigation options.

The proposed rule reflects several smaller policy shifts as well. The impervious surface standard includes a trigger for mitigation and an ultimate cap based on the total amount of impervious surface cover in the first 300 feet of the shoreland zone. The proposed rule also calls for the establishment or restoration of native vegetation in the shoreland buffer when certain types of vegetation are removed. Finally, the Department will review all amendments to future county shoreland ordinances.

Has the Board dealt with these issues before? If so, when and why?

Shoreland-wetland standards were added to NR 115 in 1980. No other changes have been made since original adoption. The board unanimously supported proposed changes to the rule as presented in June of 2009. Subsequently the legislature requested changes to the proposed rule which we believe will not significantly impact the environmental outcomes of the rule.

The department has invested significant resources in assuring that our mandated goals for this rule of protecting water quality, habitat, and natural scenic beauty are understood and will be furthered. The rule as approved by the board in June included impervious surface regulations extending out to 1000 feet and expansion of legal non-conforming structures. The legislature has requested a change to apply impervious surface standards to 300 feet (rather than 1000') and to limit expansions of legal non-

conforming structures only to vertical extensions (rather than horizontal) to a maximum height of 35 feet. This vertical expansion must also require mitigation.

2007 Public Hearing Synopsis

Eight public hearings were held during summer 2007 in Wausau (July 24), Rhinelander (July 25), Rice Lake (July 26), Tomah (July 31), Green Bay (August 2), Pewaukee (August 7), Stoughton (August 8), and Oshkosh (August 15). A total of 727 individuals gave written or oral testimony at the hearings, although it is believed more people were in attendance than submitted comments. In addition to those collected at the hearings, 1,654 additional individual comments were submitted and recorded during the public comment period. Comments were accepted until September 7, 2007. In total 8,945 comments were recorded from 2,381 people.

A formal summary and Departmental response to comments is included as an attachment to the Environmental Assessment included in this package. A general summary is provided here:

Comments ranged from general support or opposition to specific feedback on various sections of the rule. The impervious surface section received the most detailed comments that ranged from supporting the rule (292) to finding it too restrictive (468) or too permissive (122). Vegetation and buffer provisions received the second most detailed comments that ranged from supporting the rule (137) to finding it too restrictive (339) or too permissive (72). The following sections received comments in descending order of frequency: setback, lot size, height, mitigation, administrative-enforcement, land disturbing activities, definitions-applicability, land division and shoreland-wetland. The majority of comments concerned miscellaneous issues (2027 too restrictive, 296 supporting, and 295 too permissive) but did not refer to specific code sections. A number of people (871) commented on issues related to shoreland zoning but outside the scope of Departmental authority. The comments were used to inform the current draft.

Who will be impacted by the proposed rule? How will they be impacted?

The current proposal is a revision of an existing rule that has not changed the scope of who will be regulated by shoreland zoning. Some lakefront property owners who chose to remove and rebuild or expand structures in the shoreland zone will have to perform mitigation measures. Counties will have to go through an ordinance amendment process but many counties that have expanded their ordinances based on interpretation of the current code will have minor changes only. All counties can expect to handle fewer variance requests for existing nonconforming structures stemming from this rule revision. Some counties may need to change the specific factors used in review of applications for rebuilding and expansion projects.

Information on environmental analysis.

In accordance with the procedures for a Type II Action [Wis Admn Code, NR 150.03 (6)(b)(3)(a)] both an issue identification and environmental assessment have been performed for this proposal and are included in the Green Sheet package request for NR Board adoption of the revised NR 115. The assessment determined that the revision does not constitute a major state action and therefore does not require and Environmental Impact Statement.

Final Regulatory Flexibility Analysis - Small business analysis.

This rule requires counties to adopt shoreland zoning ordinances. County shoreland zoning ordinances must meet or exceed the minimum standards established by the rule. Any businesses in the shoreland zone have been complying with regulations since the late 1960's. This rule revision does not have a significant economic impact on a substantial number of small businesses so the small business analysis is not required.

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

DECISION ON THE NEED FOR AN
ENVIRONMENTAL IMPACT STATEMENT

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

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

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

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

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

In addition, counties across the state have expressed frustration with the current minimum standards found in ch. NR 115. The concerns of counties with existing standards include:
- Standards are too vague or undefined, preventing consistent application across the state.
- Standards do not provide enough direction to allow counties to amend their ordinances, requiring considerable interpretation from Department staff.
- Standards are inflexible, discouraging counties to adopt innovative regulatory programs.

Property owners have also expressed frustration with the current minimum standards, including:
- The "50% rule" for nonconforming structures is not equitable.
- In certain situations, reduced setbacks or improvements to nonconforming structures should not require a variance.

In response to inadequacies identified in the current minimum standards in ch. NR 115, Wis. Admin. Code, and the concerns raised by county staff and property owners, a 28-member advisory committee was formed by the Department in November of 2002 to help guide proposed changes in the rule. Please refer to Attachment 6 for a summary of the rule revision activities and Attachment 5 for advisory committee membership information.

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

Affected Environment

A. Physical and biological environments affected by this proposal

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

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

Section 59.692, Wis. Stats., requires the zoning of shorelands on navigable waters by counties in unincorporated areas and by cities and villages in areas annexed after May 7, 1982 and areas incorporated after April 30, 1994.

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

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

Shoreland property owners, builders, landscapers and others involved in waterfront activities will be affected once counties amend their ordinances – counties will have two years from the date of publication to revise local ordinances to reflect the new statewide minimum standards. The public that uses and enjoys Wisconsin's navigable waters will also benefit from the proposal.

Environmental effects and their significance

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

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

A. Water Quality

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

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

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

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

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

The short-term environmental effects on water quality are expected to be positive. Effects will be seen in localized or site-specific benefits to water quality. The standards are designed to preserve shoreland

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

buffers, set back or buffer structures from the water's edge, and reduce runoff from impervious surfaces, resulting in:

- displacement of sediment-producing activities away from surface waters,
- reduction in the velocity of sediment-bearing runoff, allowing sediments to settle out of the runoff and be deposited in the buffer,
- stabilization of banks, preventing shoreline erosion, and
- moderation of water flow, reducing bed scour.

The long term environmental effects on water quality are also expected to be positive. With stronger protections for and restorations of shoreland buffers and the control of stormwater runoff through impervious surface limits, there will be a reduction in the pollution loading to waters of the state from shoreland development.

B. Wildlife Habitat

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

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

- Landscape position – Buffers can function as both resident ("in-place") habitat and as travel routes for wildlife. As resident habitat, a buffer's value is supplemented by other habitats to which it is connected. This is important because larger habitat blocks are known to support greater diversity than smaller ones.
- Integrity of the buffer – When buffers become fragmented, the effects can include direct mortality (road kill), modification of animal behavior, alteration of physical or chemical environments, and introduction of exotic species. The effects of buffer fragmentation can extend into aquatic and wetland habitats by altering hydrology, increasing sedimentation, and introducing pollutants.
- Edge effects – When buffers become fragmented strips between land and water, they may be subject to negative edge effects of predation and parasitism, as well as physical effects such as wind, drying, temperature increase, and blow down of trees. Edge habitats tend to harbor disproportionate populations of predators such as blue jays, crows, raccoons, skunks, red foxes, and dogs and cats. A "soft" edge that has a gradual transition into upland areas may reduce the negative edge effects. Essentially this means providing a transitional upland buffer to support the shoreland buffer habitat functions more fully.
- Vegetation type – The species of plants in an area generally determine the animals that will occupy an area. Dense stands of evergreen trees, for example, are known for their value as deer wintering areas, and nut-producing trees, such as oak and hickory, provide food for a number of species, including bear, deer, turkey and squirrels.
- Habitat structure – The structure provided by a shoreland determines which species can use the habitat. Habitat structure includes:
  - Horizontal diversity
  - Vertical diversity
  - Soil qualities
  - Dead standing trees
  - Downed logs
  - Rocks, boulders, cliffs[4]

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

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

The long-term environmental effects on wildlife habitat are also expected to be positive; although the long-term improvement in wildlife will vary with site specific considerations. In areas that are already heavily developed, wildlife habitat is expected to improve as shoreland buffers are restored and shoreland vegetation recovers. In areas that have not yet been developed however, there will be some initial decline in wildlife habitat as areas become developed, but the decline is less than would be expected without any design standards in place to protect critical shoreland wildlife habitat.

C. Natural Scenic Beauty

Although it is commonly thought that the aesthetics of a shoreline are an intangible concept, people often recognize when it has been converted from a natural state to a more suburban landscape or when shoreline density increases. If fact, shoreline aesthetic preferences have been demonstrated and documented. A 2006 Vilas County, Wisconsin survey of shoreline property owners found that almost all respondents prefer less (53%) or the same (42%) lakefront development density. The same survey found that more public shoreline was preferred. If they could, one of the top three things respondents would do to change their lakes would be to have less shoreland development. Over half of the Vilas respondents knew at least a moderate amount about their lake's water and fishing quality prior to buying the property.[5]

In a Minnesota survey, waterfront property owners and lake users cited cabin and home development over 85% of the time as the cause when they perceived a decline in the scenic quality on the lake they used the most. Other activities at the top list that resulted in a decline in scenic quality included installation of docks and boat lifts, and removal of trees and shrubs in the shoreland area.[6]

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

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

- changing the color to camouflage the structure,
- reducing gloss or reflectivity,
- planting trees and shrubs to screen and shade the structure,
- softening highly visible angularities or structural complexity,
- removing structural elements from ridge lines to reduce the contrast of silhouettes,
- adapting structural forms which reflect the local terrain,
- reducing artificial lighting, and
- keeping clearings and land disturbances to a minimum.[7]

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

Significance of cumulative effects

When a landowner develops a waterfront lot, many changes may take place including the addition of driveways, houses, decks, garages, sheds, piers, rafts and other structures, wells, septic systems, lawns,

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[5] Provencher, B. and J. Schoen. 2007. *Results of the 2005 – 2006 Survey of Vilas County Shoreline Property Owners.* University of Wisconsin- Madison. Department of Agricultural and Applied Economics.

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

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

sandy beaches and more. Cumulatively these isolated alterations on individual lots around or on shared water bodies further decreases the ability of the shoreland area to serve its natural functions- recharging groundwater, filtering polluted runoff and providing wildlife habitat.

A. Water quality

Waterfront property owners may contest that a single alteration in the shoreland makes a difference to lake, stream or river water quality. However, single unchecked shoreline alterations by many property owners cumulatively affect water quality for swimming, fishing and wildlife observation. Soil compaction from construction activity, tree and native plant removal and the addition of impervious surfaces that reduce groundwater recharge and increase storm water runoff all affect water quality.

A shoreland lot with a naturally vegetated buffer and a structure setback should be sufficient to protect water quality. A buffer of natural shoreland vegetation traps and filters sediment and debris from runoff. Depending on the size (length and depth) and complexity of the shoreland buffer, 50 to 100% of the solid particles can settle out as plants slow sediment-laden runoff.[8] Regulated setbacks and lot sizes improve the ability of buffers to filter, creating adequate space to reduce runoff volumes, sediments, nutrients and toxicants from reaching the buffer. The current law includes some of these controls; however, the 1997 Shoreland Management Program analysis showed the law inadequate to prevent further water quality degradation.[9]

Delavan Lake (Walworth County) and Big Muskego Lake/Bass Bay (Waukesha County) show how developed shorelands have and will continue to impact water quality under the current law, especially as waterfront development continues to boom throughout the state. Development around Delavan Lake increased by 67% from 1981 to 2005, brining more impervious surfaces that direct fertilizers and pollutants to the lake and stimulate the growth of invasive Eurasian milfoil.[10] The community spent $7 million to restore lake water quality. The greatest non-agricultural phosphorus source in the Big Muskego Lake/Bass Bay watershed is residential development. And, 63% of the lake/bay's sediment loading is a result of construction site erosion, making the conversion of land to other uses the biggest nonpoint source for sediment for these waters.[11] A $1 million restoration was completed in 2007. Proactive, more effective shoreland regulations may prevent the need for expensive water quality restoration efforts.

Northern Wisconsin lake associations are aware of the migration to their shores and the pressures to develop these waterfront properties more intensely. Balsam Lake Protection and Rehabilitation District (Polk County), Beaver Dam Lake Management District (Barron County), and Chippewa Flowage Area Property Owners Association (Sawyer County) all have taken active steps to protect water quality, commissioning water quality monitoring studies and engaging in shoreland restoration award programs. Some of these measures are in line with proposed NR 115 revisions.

A number of studies suggest links between shoreland development and increased large plant (macrophyte) growth in nearshore waters—see the water quality impacts associated with excess inputs of organic compounds and nutrients in the preceding section: "Environmental effects and their significance". One study found that on a number of developed seepage lakes in northwestern Wisconsin aquatic plant growth has increased extensively in the nearshore waters since the 1930s.[12] These findings are supported by a Wisconsin study of nearshore sediment cores (measures historic macrophyte growth and decay) in both

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

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

[10] Eiswerth, M., R. Kashian, and M. Skidmore. 2005. *What is the Value of a Clean and Healthy Lake to a Local Community?* Delavan Lake Improvement Association.

[11] Big Muskego Lake/Bass Bay Protection and Rehabilitation District. June 2004. *Big Muskego and Bass Bay Management Plan.*

[12] Borman, S. C. 2007. *Aquatic plant communities and Lakeshore land use: changes over 70 years in northern Wisconsin lakes.* University of Minnesota (Doctoral dissertation).

developed and undeveloped lakes.[13] The cores from lakes with no shoreline development, with the exception of one, do not show an increase in plant growth compared to cores from developed lakes. Similarly, looking at the relationship between riparian development and habitat/biological changes, another Wisconsin study found that in general more dense development leads to habitat simplification and homogenization and is correlated with a decline in the variety of macrophytes.[14] Two of the top three things Vilas County survey respondents would do to change their lakes would be improve fishing quality and reduce lake weeds. About 22% would strengthen shoreland development restrictions versus 7% would loosen them.[15]

B. Fish and wildlife habitat

Wildlife are attracted to lakes and streams because the essentials of life for many species occur there, including food, water, shelter, and a place to raise their young. The aquatic insect community is an important component of the food chain in streams.[16] Over 20 years ago researchers found that aquatic insect diversity drops sharply in streams where watershed impervious surface exceeded 10 to 15%.[17]

Fine sediments also affect fish spawning, egg incubation and fry rearing. A study of 47 warm water streams in southeast Wisconsin that found that fish and insect populations decline dramatically when impervious surfaces exceed about 8-10% of the watershed. Streams with more than 12% imperviousness have consistently poor fish communities.[18]

A northern Wisconsin study found significant declines on developed shorelines in insect-eating and ground-nesting birds such as loons and warblers, contrasting with increases of seed-eating birds and deciduous-tree nesting birds such as crows and goldfinches.[19] In short, "city birds" are favored on developed shorelines over other species. Fewer green frogs were found on lakes in northern Wisconsin when the shorelines were developed. Frogs were eliminated from shorelines with 100-foot lots (52 homes per mile).[20]

C. Economics

When purchasing waterfront property, people inherently value clean water, plentiful wildlife and scenic vistas. A study in Maine found that property values would decline approximately $10.5 million with a three-foot decline in water clarity, roughly 5% of the total property value.[21] Each year more than 1.5 million anglers spend 17 million days fishing in Wisconsin. They spend $1.1 billion directly on fishing related expenses, which generates more than $2.1 billion in economic activity.[22]

Changing one waterfront lot may not result in a measurable change in the quality of the lake or stream. The cumulative effects to water quality, wildlife habitat and property values, however, can be enormous and

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[13] Garrison, P. 2000. *Use of paleolimnology to document the effect of lake shoreland development on water quality.* Journal of Paleolimnology. 24: 369-393.

[14] Jennings, M., et al. 2003. *Is Littoral Habitat Affected by Residential Development and Land Use in Watersheds of Wisconsin Lakes?* Lake and Reservoir Management 19(3): 272-279.

[15] Provencher, B. and J. Schoen. 2007. *Results of the 2005 – 2006 Survey of Vilas County Shoreline Property Owners.* University of Wisconsin- Madison. Department of Agricultural and Applied Economics.

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

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

[18] 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.

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

[20] Woodford, J.E. and M. W. Meyer. 2002. Impact of lakeshore development on green frog (Rana clamitans) abundance. *Biological Conservation.* 110(2): 277-284; Meyer, M., J. Woodford, S. Gillum, T. Daulton. 1997.

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

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

long lasting. Amended shoreland protection standards would help the state adequately and sustainably fulfill its duty to protect the public trust-interest in Wisconsin waters. This is a policy decision that may require continuing education to the regulated community, but certainly one that needs to be weighed heavily when considering the overall health of Wisconsin's lakes and rivers.

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

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

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

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

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

The revised ch. NR 115 also contains several areas where the county can choose to utilize a locally appropriate mechanism for regulation to meet the proposed provisions of the rule. However, the Department would need to review and approve county developed initiatives to guarantee that they will be at least as protective as the provisions proposed in ch. NR 115 and to meet the standards set forth in Sec. 281.31 Wis. Stats.

Significance of controversy over environmental effects
There continues to be controversy over the proposed rule. Due to the distinct nature of the public trust versus private property rights, there will probably always be a debate over zoning rules and regulations to

protect water quality, wildlife habitat and natural scenic beauty. Just as in general zoning there are debates of a similar nature related to subdivision regulations, noise, odor, and other issues.

The rule revision process has taken over six years, involved a highly diverse and well represented advisory committee, gathered additional detail through five issue specific workgroups with additional affected parties at the table, added a public participation step with eight listening sessions around the state and then accepted comments on five individual drafts of the rule before requesting permission for the first round of formal public hearings. Recognizing that public hearings are the public's formal opportunity to review and comment on the draft proposal, we held eleven hearings in 2005 to update Wisconsin's nearly 40 year old Shoreland Management Program.

After the public hearings in 2005, three specific focus groups were developed in 2006 on mitigation, impervious surfaces and implementation and enforcement. These groups worked on the issues highlighted at the 2005 hearings to come up with potential solutions for the 2007 public hearing draft. Finally, in the summer of 2007, eight additional public hearings were held around the state. With this amount of public involvement, clearly there is an indication that the Department understands the complexity of this issue. Dedication to a complete and thorough public participation process is critical to the success of a revised program. Public hearings provide a means for incorporating the public's values into decisions that affect their lives and also allow the public the opportunity to offer meaningful input into the decision making process. They are intended to produce a code that not only protects the water resources that make Wisconsin so desirable, but also to balance that protection with an understanding of property ownership and introduce a level of flexibility that makes protection of our resources socially and economically feasible.

In 2005, the Department held the first round of public hearings, eleven total around Wisconsin. Comments were accepted until August 26, 2005. Over 1400 people attended the public hearings and over 50,000 comments from nearly 12,000 individuals were received throughout the public comment period. Comments for the second round of eight hearings were accepted until September 7, 2007. Over 730 people attended the hearings, while over 8900 comments from nearly 2400 individuals were received throughout the comment period.

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

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

The department has prepared databases cataloging all the comments received throughout the public comment periods. The databases are broken into segments of the code and list all comments related to individual sections. There are also individual pages devoted to miscellaneous comments and comments outside the scope of the NR 115 revision process. Comments have been classified in six different categories including:

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

General categories of comments and number of respondents from 2007 are listed in the chart below. To see how the Department responded to the public hearing comments in 2007 see attachment 1 at the end of this

document and attachment 2 for the 2005 comment summary. To review complete copies of the public comment databases, please contact Gregg Breese at Gregory.breese@wisconsin.gov or at (608) 261-6430.

NR 115 Issue	Neutral	In Favor	Too Permissive	Support and Oppose Sections	Opposed
General	7	231	18	306	1250
Definitions	4	1	1		98
Shoreland-wetland	5	0	4		5
Land Division	1	0	40		8
Lot Sizes	2	125	38		229
Setbacks	8	97	149		171
Height	8	86	17		206
Buffers	39	137	72		339
Impervious Surfaces	9	292	122	77	468
Mitigation	1	94	7		167
Land Disturbance	3	78	9		67
Administrative-Enforcement	88	1	142		25
Misc. Comments	6	296	295		2027
Outside the scope of NR 115	9	0	4		858
Comment totals by category	111	1438	918	383	5923
Total Comments*	**8945**				

*Includes 132 undecided and 40 language modification comments.

Each NR 115 issue outlined above contains several components, for example the comments on setbacks deal not only with the minimum 75 foot setback, but also relate to setback reduction, measuring the setback, requiring permits for various activities within the setback, certain exemptions from the setback, the issue of boathouses, wetland setbacks, the definition of structures and others. Therefore, the categories contain several elements that fall within the specific section of the code. For more detail, please see attachment 1 at the end of the document.

Formal response to comments and summary documents were developed for both public comment periods- see attachments 1 and 2. Many of the issues addressed in the 2007 revision to NR 115 are a response to the 2005 comments. The detailed analyses of the 2007 comments and department responses have informed the final draft submitted for consideration in 2008.

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

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

navigable water resources while respecting the rights of individual landowners. Given the opportunity, the Department can attain this goal.

Recommendation

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

Liesa Lehmann Kerfer, Section Chief — Date 4-23-09
Waterways Protection

Gregory Breese, Evaluator, Shoreland Program Manager — Date 4/15/09

Russell A. Rasmussen, Director — Date 4/28/09
Bureau of Watershed Management

Certified to be in compliance with WEPA

Director, OEEA (or designee) — Date 4/17/09

II. Issue Identification Activities and Agency Contacts

A. Rule Revision Public Participation Process

The NR 115 Advisory Committee was developed to aide the department with a comprehensive revision to the State's Shoreland Management Program. The group met eight times between November 2002 and November 2003 and again in June 2006 to discuss issues surrounding shoreland development and to identify areas of concern. Initial meetings of the advisory committee reviewed scientific research and legal perspectives on shoreland development. The remainder of the meetings focused on specific issues related to shoreland management – setbacks and buffers, nonconforming structures, and development density. The committee worked with the Department to develop an initial set of concepts for proposed changes to ch. NR 115, Wis. Admin. Code.

In the summer of 2003, the Department, with support and participation by the Advisory Committee members, decided to convene five work-groups to flesh out remaining issues in the revision. The five work-groups, agriculture, alternative development, forestry, recreational areas and urbanized waters, each met a number of times in person or via phone conference and/or e-mail to discuss pertinent issues. Each work-group was led by a Department staff member involved in the revision process and the membership included Advisory Committee representatives and other affected or interested parties in specialized fields related to the subject matter. (Please refer to attachment 4 for work-group membership information.)

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

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

In July and August of 2005, the department held eleven public hearings around the state and collected over 12,000 comments during the public comment period (comments are available upon request and the 2005 comment summary can be found in attachment 2). After the hearings, three focus groups were formed to flesh out specific issues identified during the hearing process. These focus groups worked on the issues of impervious surfaces, mitigation and implementation and met in the fall and winter of 2006. (Please refer to attachment 3 for focus group membership information.)

Due to the amount of change that had occurred in the proposal based on 2005 hearing comments and the results of the focus group work, the department received permission to take a revised proposal back out to the public for a second round of public hearings in the summer of 2007. In July and August of 2007 the Department held eight public hearings around the state and collected over 8900 comments during the public comment period that extended until September 7, 2007.

Intra-Agency Cooperation

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

Inter-Agency Cooperation

The Department of Commerce was contacted and consulted on private on-site sewage disposal and sanitary sewer systems as well as infiltration standards contained in the mitigation section of the rule. The Department of Administration was consulted on the plat review provisions in the land division section of the revision and the Wisconsin Department of Transportation was consulted on the distinction of public and

private roads for common ownership properties like condominium developments. In addition, County Zoning Departments across the state were involved in varying degrees of review throughout the revision process. Some were members on the full advisory committee, some participated in work groups or focus groups, most provided comments during public comment periods and several were briefed individually numerous times during the mulit-year process to ensure continued dialogue. Forty-nine County Zoning Departments also responded to the "County cost to amend shoreland zoning ordinances" survey conducted in late 2006. We also worked with Regional planning agencies to secure innovative land use and zoning methods for discussion and potential inclusion in the revision.

Agency Contacts
Todd Ambs – Water Division Administrator
Russ Rasmussen – Director, Bureau of Watershed Management
Liesa Lehmann Kerler, Waterways Protection Section Chief, Bureau of Watershed Management
Gregg Breese – Shoreland Team Leader, Bureau of Watershed Management

Additional Information
Attached to this document is the 2007 Response to Comments Summary (Attachment 1), NR 115 2005 Public Hearing Summary (Attachment 2), NR 115 Focus Group Membership (Attachment 3), NR 115 Work Group Membership (Attachment 4), NR 115 Advisory Committee Membership (Attachment 5) and the Summary of Rule Revision Activities (Attachment 6).

III. NR 115 Revision Description

A. Proposal objectives

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

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

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

The Shoreland Management Program is also a key component in the fulfillment of the Department's responsibility to uphold Wisconsin's Public Trust Doctrine. Under the Public Trust Doctrine, Wisconsin's lakes and rivers are public resources, owned in common by all Wisconsin citizens. While it was once primarily interpreted to protect public rights to transportation on navigable waters, the Public Trust Doctrine has been broadened to protect public rights to water quality and quantity, recreational activities, and scenic beauty.[23]

Wisconsin law recognizes that owners of lands bordering lakes and rivers - "riparian" owners - hold rights in the water next to their property. These riparian rights include the use of the shoreline, reasonable use of the water, and a right to access the water. However, the Wisconsin State Supreme Court has ruled that when conflicts occur between the rights of riparian owners and public rights such riparian rights are still subject to the public's paramount right and interest in navigable waters.[24]

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[23] Quick, J. 1994. "The Public Trust Doctrine in Wisconsin." Wisconsin Environmental Law Journal, Vol. 1, No. 1.
[24] *State v. Bleck*, 114 Wis. 2d 454 , 338 N.W. 2d 492 (1983)

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

B. Key Studies, assumptions or policies

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Major provisions and new requirements

Major provisions of the proposal include adding definitions to the rule for clarity; providing exemptions for certain activities from shoreland setback,; and establishing impervious surface standards that alter and mitigate the regulation of nonconforming structures by basing regulation on the size and location of structures. These changes will significantly decrease the number of variances granted by counties, allowing certain activities to be allowed with a simple administrative permit by the county. A brief description of the proposal follows.

Title- Amended to read "Wisconsin's Shoreland Protection Program"

Section 115.01 – Purpose

- "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty

Section NR 115.02- Applicability

- Explicitly states applicability of rule to unincorporated areas annexed after 1982 and unincorporated areas incorporated after 1994.

Section NR 115.03- Definitions

- Added defmitions for "Access and viewing corridor", "Building envelope", "Existing development pattern", "Impervious surface", "Mitigation" and "Routine maintenance of vegetation".

Sections NR 115.04 Shoreland-wetlands

- Language updated to reflect fact that after 1985 all preliminary Wisconsin Wetland Inventory maps had been adopted. Language now refers to the wetland map "amendment" process.
- Added timeframe for zoning wetlands as reflected in amended maps and zoning districts.
- Added provision to resolve discrepancies in map and field conditions.
- Amended "Rezoning shoreland-wetland districts" language to clarify communication between the counties, Department and Army Corps of Engineers.

Section NR 115.05 - "Minimum Zoning Standards for Shorelands"

Section NR 115.05 (1)(a) – Minimum lot sizes

- Counties may allow development on a substandard lot if the lot is a legal lot of record that complied with the applicable lot size requirements in effect at the time the lot was recorded at the county register of deeds office and the proposed construction of a structure will comply with all other standards in the code.
- Counties may also allow development on substandard lots that don't meet the area and width standards if:
  1. The lot was never combined with another lot through plat, survey, conveyance or other action;

2. The lot has never been developed with one or more structures placed wholly on an adjacent lot; and
3. The lot is developed to comply with all other applicable shoreland ordinance standards.

Section NR 115.05 (1)(b) – Building setbacks

- Language is added to address structures exempted by other state or federal laws from the minimum setback standards.
- The construction of new dry boathouses is still exempted; however, a provision has been added that boathouses must be located within the access and viewing corridor, not provide human habitation nor contain plumbing.
- No new building is allowed within the first 35 feet of the ordinary high-water mark.
- New "Existing development pattern" and "Access and viewing corridor" definitions support this standard.

Section NR 115.05 (1)(c) – Renamed "Vegetation"

- Routine maintenance of vegetation permitted in shoreland zone. Removal of trees and shrubs also is allowed if the trees and shrubs are exotic or invasive species, diseased or damaged, or an imminent safety hazard, but the removed trees and shrubs must be replaced with comparable species of native vegetation in the same area.
- Language governing management of shoreland vegetation in at least the first 35 feet from the OHWM is clarified, resulting in a more functional buffer protecting habitat and water quality.
- Other vegetation management permitted in the vegetated buffer zone with a county approved plan that requires erosion control; native, non-invasive species re-vegetation; maintenance and monitoring and enforceable restrictions.
- An access and viewing corridor that is "30 feet in any 100 feet" is still permitted in the buffer zone; however, a maximum corridor width of 200 feet per riparian lot or parcel has been added and a rule that new boathouses must be located in the corridor.
- New "Routine maintenance of vegetation" and "Access and viewing corridor" definitions support this standard.

Section NR 115.05 (1)(d)- Filling, grading, lagooning, ditching and excavating

- These actions are permitted if also designed to minimize impairment to natural scenic beauty.

Section NR 115.05 (1)(e)– Impervious surfaces

- To achieve water quality, habitat and pollution protections counties must create standards that regulate the total percentage of impervious surface cover on lots in the shoreland zone.
- The total impervious surface coverage allowance is 15%, but may be extended up to a maximum of 30% total if mitigation measures are implemented and maintained.
- Routine maintenance of all existing impervious surfaces may be allowed.
- Lots with more than 30% cover may not add more impervious surfaces if the addition increases the total area of impervious surface. The rules for impervious surfaces and nonconforming principal structures may allow some impervious surfaces on such lots to be expanded or relocated if other impervious surfaces are removed or reduced in area so that the net effect is no increase in impervious surface.
- New "Impervious surface" and "Mitigation" definitions support this standard.

Section NR 115.05 (1)(f) – Height

- A new provision on structure height added to protect and preserve the natural scenic beauty of lake and riverine environments.
- Structures may not exceed 35 feet high within 75 feet of the ordinary high-water mark.

Section NR 115.05 (1)(g) – Nonconforming structures and uses

- Removed rule that discussed limiting the cost of changes to nonconforming structures to 50% of the equalized assessed value. Counties are still allowed to impose the 50% rule if they choose to do so, or they may address nonconformities via limits on impervious surface area and mitigation requirements.
- Allows continuation of lawful use and routine maintenance of nonconforming structures.

- Added provision allowing expansion or relocation of nonconforming principal structures within 75 feet of the ordinary high-water mark with a county permit that issues after finding that the project:
    1. Meets all other ordinance provisions,
    2. Will not expand or relocate closer to the OHWM,
    3. Will remove all structures or portions thereof within 35 feet of OHWM,
    4. Has no other compliant building location options,
    5. Involves a principal structure that has not been abandoned in the past 12 months and
    6. Mitigates the impacts of the development.
- New "Mitigation" and "Building envelope" definitions support this standard.

Section NR 115.05 (4) - Adoption of Administrative and Enforcement Provisions

- In addition to notifying the Regional office prior to any hearings on the following, counties must also submit to the Department within 10 days permits to relocate or expand nonconforming principal structures; variances, special exception and conditional use permits; appeals for map or text interpretations, and decisions to amend map or text ordinances.

Section NR 115.06 (2) – Review and Approval of Shoreland Zoning and Land Division Ordinance

- Provision added that after review and upon determining that the county shoreland ordinance and all of its amendments complies with s. 59.692, Stats., the Department shall issue a certificate of compliance to that effect.
- Counties with a non-compliant or no shoreland ordinance have 180 days to work with Department to draft a compliant shoreland ordinance.

D. Exemptions provided by this proposal

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

Section NR 115.05 (1) (B) –Minimum setback

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

- Open-sided and screened structures (s. 59.692 (1v), Wis. Stats.)
- Fishing rafts on the Wolf River and Mississippi River (s. 30.126, Wis. Stats.)
- Satellite dishes and antennas (47 CFR 1.4000 and 25.104)
- Boathouses
- Utilities (Comm 83, s. 196.491, Wis. Stats.)
- Walkways, stairways, or rail systems

IV. Environmental Consequences

A. Anticipated impacts on the physical and biological environment

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

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

B. Anticipated direct and indirect economic impacts

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

and garden centers can also expect positive economic impacts as property owners restore shoreland vegetation buffers along lakes and rivers.

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

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

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

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

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

The Department also considered environmental justice in the analysis of these rules. The Department defines environmental justice as a continuous decision-making process that ensures participation by minority and low income populations in affected areas, along with majority populations, in order to ensure that as an outcome all people receive the benefits of clean, healthy and sustainable environments, regardless of race, national origin, or income. As the rules are implemented, there is an expectation that environmental justice will be considered, both in terms of proving opportunities for participation by low income and minority populations and of the impacts on these groups. Such impacts might be reducing the health risk of children playing in a polluted neighborhood river, having healthier fisheries available to low-income populations that rely on fish for food, or maintenance of wild rice beds for harvest by Native American communities.

The regional availability of energy will be maintained by this proposal by allowing counties to exempt utility structures from shoreland setback requirements.

V. Alternatives and Their Impacts

A. No Action

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

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

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

B. Selection of Different Standards

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

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

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

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

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

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

EA ATTACHMENT 1

RESPONSE TO PUBLIC COMMENTS AND 2007 PUBLIC HEARINGS

Proposed Revisions to Statewide Minimum Shoreland Zoning Standards NR 115, Wisconsin Administrative Code

Hearing Summary Report

In 2007, the Natural Resources Board authorized public hearings on the proposed revision of the Shoreland Protection Program (Wis Admn Code, ch. NR 115). This document is a summary of the approximately 8,945 comments from 2,381 individuals which were received by the Wisconsin Department of Natural Resources during the public comment period. This summary does not contain each individual comment received. For a copy of the complete comment database please contact Gregg Breese at (608) 261-6430 or Gregory.breese@wisconsin.gov.

Eight public hearings were held during summer 2007 in Wausau (July 24), Rhinelander (July 25), Rice Lake (July 26), Tomah (July 31), Green Bay (August 2), Pewaukee (August 7), Stoughton (August 8), and Oshkosh (August 15). A total of 727 individuals gave oral testimony or submitted written comments at the hearings, although it is believed more people were in attendance than submitted comments. In addition to those collected at the hearings 1,654 additional individual comments were submitted and recorded during the public comment period. Comments were accepted until September 7, 2007 and were used in part to inform the current proposal.

Comments were received from the following organizations or individual representatives: DNR Forestry, Remediation-Redevelopment and Natural Resources Board; Wisconsin Department of Justice; State legislators; U.S. National Park Service; university personnel; counties including planning/zoning and land/water conservation departments; municipalities; and land trusts. Representatives from the following industries commented: campground and resort owners; banking and finance; realty; construction; plumbing; pile driving; legal services; landscaping; engineering; and print media. The following special interest groups also commented: Wisconsin County Code Administrators; numerous lakes associations; builders and realtors associations; and environmental advocacy groups.

Comment Overview

Comments ranged from general support or opposition to specific feedback on various sections of the rule. The impervious surface section received the most detailed comments that ranged from supporting the rule (292 comments) to finding it too restrictive (468) or too permissive (122). Vegetation and buffer provisions received the second most detailed comments that ranged from supporting the rule (137) to finding it too restrictive (339) or too permissive (72). The following sections received comments in descending order of frequency: setback, lot size, height, mitigation, administrative-enforcement, land disturbing activities, definitions, applicability, land division and shoreland-wetland.

The majority of comments received concerned miscellaneous issues (2027 too restrictive, 296 supporting, and 295 too permissive) but did not refer to specific code sections. Comments raised a range of issues, such as concern that the rules are one-size-fits-all; support for revising the inflexible rules; concerns about implementation costs for property owners and counties; and feeling that short-term financial restraints should not override long-term environmental, social, economic benefits. Many of these issues are addressed in the code.

A number of people (871) commented on issues related to shoreland management, but outside the scope of Departmental authority. The biggest concern was that the law does not apply to all development in incorporated areas of the state. Only the State Legislature is empowered to change this through legislation.

Concern was also expressed over agricultural runoff impacts on water. The State has separate regulations that address the distinct impacts from shoreland development and agricultural runoff.

Key

Purpose of section: Why included in code
Current provision: Existing NR 115 code
Proposed provision: 2007 Public hearing proposed language
Public comment: Summary of comments on provision
Response: Response to 2007 comments, reason for change and decision as reflected in proposed rule revision for which final approval is being sought

Title

Purpose of section: To allow quick comprehension of information contained in the code.
Public Comment: This change was not addressed in the previous public hearing process.
Response: "Shoreland Management Program" indicates a proactive role by the regulating agency, whereas "Shoreland Protection Program" explains the purpose of the rule. Title changed.

Purpose

Purpose of section: Describe supporting statutes and public trust reasons for the code.
Public Comment: This change was not addressed in the previous public hearing process.
Response: The changes here are for clarification purposes. No change in substance.

Applicability

Purpose of section: This section provides a consolidated reiteration of various sections of the statutes requiring shoreland zoning for specific geographic areas, including statutory provisions adopted since enactment of the original rule.

Current Provision: The provisions of this chapter apply to county regulation of development in 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 and repair of state highway and bridges, carried out under the direction and supervision of the Wisconsin Department of Transportation are not subject to local shoreland zoning ordinances, if s. 30.2022(1), Stats. applies.
History: Cr Register, July, 1980, No. 295, eff. 8-80; am. Register, October, 1980, No. 298, eff. 11-1-80; **correction made under s. 13.93(2m)(b)7., Stats.**

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

Public Comment: Two themes are raised:

- Revised NR 115 should apply to the entire state regardless of municipal boundaries
- As worded, revised NR 115 will retroactively apply to all areas annexed after 1982.

Response: Revert to existing code language in addition to modifying the rule language to further clarify. The intent of the revision language is to provide a consolidated statement of the statutory requirements for the geographic areas subject to shoreland zoning. Areas of cities and villages within the municipal boundary before May 7, 1982 are not, and are not proposed to be, required to have shoreland zoning. The statute requires cities and villages to apply the county shoreland provisions in effect at the time of annexation to areas annexed after May 7, 1982 and areas incorporated since April 30, 1994. While a clarification was added for rule applicability in annexed and incorporated areas after specific dates, it is beyond the scope of the Department's authority to require local governments to adopt shoreland zoning in areas not required by the legislature.

Definitions

Purpose of section: Define words used in the rule. This section does not set standards. We strive to reinforce common dictionary usage and to be consistent with other law and rules wherever possible.

Public Comment
(1) Access and viewing corridor:

- Clarify that structures providing access to the water (i.e. walkways, steps) are permitted and don't require that the corridor be completely vegetated.
- Remove term "pedestrian" to avoid confusion over public access

Response: Keep the word vegetated in place because many counties currently limit the size of structures that provide access and the remainder of the viewing and access corridor should be vegetated.

Public Comment
(2) Accessory structure:

- Delete: In code, terms "structure" and "impervious surface" are used to refer to accessory structures but the term is never used
- Term should include existing boathouses, deer stands, duck blinds

Response: The code applies to structures that are accessory, including those mentioned by commenters, but does not treat them differently, so no definition is needed. To add a definition or examples adds complexity and risks additional confusion. References to accessory structure in the remainder of the code were not included so neither was the definition.

Public Comment
(3) Best management practices:

- Refer to as "technical standards"

Response: To simplify the proposed code changes, this definition is not included. BMP's and technical standards have many references in other DNR regulations and have not been shown to have contradictory meanings.

Proposed Addition, not part of the public hearing process
(3) "Building envelope" means the three-dimensional space within which a structure is built on a lot.
Response: To protect future buyers, the definition will help ensure that adequate space is available on newly divided lots for conforming building envelopes. The dimensional space required for such structures needed to be defined and is included in the code.

Public Comment
(5) Compliant building location:

- Clarify "30 foot deep"
- 30 feet deep too small for modern construction or a high value home

Response: Compliant building location as used in the proposal confirms with the generally accepted meaning and does not need specific definition so was removed. However, there was a need to explain the physical space where a building may be constructed. "Building envelope" definition was added to spatially describe building location.

Public Comment
(6) Conditional use or special exception

- Separate these terms
- Define but delete when or how they are issued

Response: Because general zoning law applies a generally accepted meaning to the phrase, the definition was not included in the code.

Proposed Addition, not part of the public hearing process
(7) "Existing development pattern" means a pattern of principle structures that exists within a certain distance of a proposed structure. There must be a principle structure in both directions.
Response: Setback averaging is very loosely defined in the existing code and there have been numerous interpretations by different counties. Comments on the "Minimum setback" section indicated support for the setback averaging process and support for its clarification. The proposed rule sets some parameters for when to use the standard but explaining what the term meant was best placed in the definition section. Definition added.

Public Comment
(8) Expansion:

- Revise to state "addition of impervious surface"
- Clarify. Change "larger, taller, or both" to "an addition to an existing structure that increases the footprint of the building, or both"
- Concern that roofline alteration/pitch-change would fall under expansion and trigger mitigation while not necessarily adding to net usable/livable space

Response: The regulations applicable to expansion, i.e. for nonconforming structures, are specifically defined within the code where applicable. Any currently accepted definition of expansion can be used. Definition not included.

Pubic Comment
(9) Impervious surface

- Given important nature of this term, the phrase "a large portion" needs further definition.
- Concern with inclusion of driveways (should consider different soils) and decks

Response: No change to definition. Definition the is same as used in NR 151, with the phrase, "unless specifically designed, constructed, and maintained to be pervious" added.. Use of new technology such as pervious concrete, etc. is encouraged as mitigation to help reduce run off and encourage infiltration and the applicant should be credited for this use. Definition added.

Public Comment
(10) Lift

- State specific type of lift: for humans or boats or no difference

Response: Lifts are already allowed to provide safe pedestrian access to the water in NR 115.13(4). Definition not included.

Public Comment
(11) Lot

- Do not tie term to specific form of access. Current term excludes island lots
- "Note": may conflict with findings

Response: Continue to allow each county to define "lot" as has been past practice. Definition not included.

Public Comment
(12) "Mitigation"

- Explain term more clearly.

Response: The Department tried to rely in county staff's knowledge of local soils, etc. to encourage a broad definition of mitigation that would work for each county. This is a new requirement in the code so some baseline definition is needed. Definition added.

Public Comment
(13) Ordinary High Water Mark:

- OHWM should be set by the DNR, not the counties, as it's a significant factor in establishing criteria for this code.

Response: It is beyond the scope of the rule to specify. In many cases OHWM is obvious and it would be administratively burdensome for the DNR to make each OHWM determination. DNR consults with trained county staff on difficult cases. No change to existing definition.

Public Comment
(14) Primary shoreland buffer:

- "Vegetated buffer strip" language does not convey allowance of access/viewing corridor structures.

Response: Did not include any reference to "primary shoreland buffer" in proposal and instead used "35' from the OHWM" where necessary. Definition not included.

Public Comment
(15) Routine Maintenance

- Defining this term is needed since the definition used in air management NR 405.2 would not have the same consequence if allowed to be applied to this code.

Response: Definition not included.

Proposed Addition, not part of the public hearing process
"Routine Maintenance of vegetation" means normally accepted horticultural or forestry practices that do not result in the loss of any layer of existing vegetation and do not require earth disturbance.
Response: Definition of this term needed to distinguish between common routine maintenance of structures and of vegetation, as used in the vegetation standards section. Definition added.

Public Comment
(16) Secondary shoreland buffer:

- Inclusion of this term is extraneous as it is essentially turf grass. More language but does not contribute resource protective measures to the code.

Response: No change. Because the choice exists not to vegetate and invasive plants are a risk, the standard is needed along with the definition.
Current version: No references to secondary shoreland buffer included in proposal. Definition not included.

Public Comment
(17) Structure:

- Definition overly broad. Consider whether term includes both primary (principal) and accessory structures
- Boathouses "temporarily placed on the ground" dredges up the same controversy faced on the St. Croix and Mississippi Rivers

Response: Proposed setback section includes a specific list of structures exempt from the 75' setback, so that we can rely on the currently used definition of structure that counties have been utilizing. Definition not included.

Public Comment
(18) Variance:

- Decide whether to include "use" variances.
- Definition should not limit the code to "dimensional" variances. Delete "dimensional" so both use and dimensional variances are an option.

Response: There are no limiting uses in this code so the issue of a use variance is moot. This definition has been in the code since implementation and in the proposal it remains unchanged.

Public Comment
Suggested definition additions:

- Lake
- Structural alteration: only limited to changes that increase impervious surface
- Maintenance and repair: any change made to a structure that does not constitute expansion

- Height: concern that if not defined, an increase in roof pitch could fall under "Expansion" or "Structural alteration"
- Planned development districts

Response: Lake is a term in common use not requiring definition for purposes of this code. Suggestions for the other definitions relate to standards rather than definition. Definitions not included.

Shoreland Wetlands

Response: Change title of section to "Shoreland-Wetland mapping and minimum standards" to more accurately reflect the content of the section.

Purpose of section: Ensures that counties designate all shorelands in the county identified as wetlands on the Wisconsin wetland inventory maps or Wisconsin wetland inventory map amendments as "shoreland-wetland zoning districts".

Current Provision: Includes provisions for the adoption of shoreland wetland maps, permitted and prohibited uses, along with re-zoning criteria and processes.

Proposed Provision: Deletes the provisions for the adoption of the shoreland wetland maps and includes the remainder of the original language with a noted change to the standard for re-zoning shoreland wetlands. The proposed change states "...there is a practicable alternative or if..." There are also modern terminology drafting changes that refer to the correct offices.

Public Comment:

- Several comments were received with respect to the proposed change in the standards for re-zoning questioning the need for the change.
- Comments were also made requesting an opportunity to challenge the Wisconsin wetland maps.

Responses:

- Counties are enabled by statute to apply general zoning, so language stating "other types of districts (such as general purpose, agricultural, industrial, commercial, residential, recreational, conservancy, or wetlands districts) may be created in addition to shoreland-wetland zoning districts" is removed from the code.
- Counties have already adopted the first version of the WWI and DNR is working on updating the maps. Section 115.04(2)(a) is changed to apply to DNR "amendments" of WWI maps.
- Note added to maintain consistency with ch. NR 116, the Floodplain zoning code, and allow regulators to base permit decisions on actual field conditions rather than relying on maps which can never be a completely accurate boundary determination. Note also clarifies the regulation of actual wetlands from the rezoning process which is required to convert a wetland to an upland area. The note should also make it easier to contest map errors and for counties to regulate wetlands based on field conditions in a timely manner. Added note to 115.04(2)(b).
- Additional language needed to clarify that a rezone is a request to convert a wetland to upland, or to use it for a non-permitted use. Added language to NR 115.04(2)(e).

Section Title

Proposed Addition, not part of the public hearing process

Response: Title should more accurately reflect content of section. Change title of section to "Establishment of Zoning Standards".

Lot Size

Purpose of section: Provide a minimum amount of area to preserve space for infiltrating runoff, for fish and wildlife habitat, and some natural scenic features.

Current Provision: 20,000 square feet and 100 feet wide for unsewered lots; 10,000 square feet and 65 feet wide for sewered lots.

Proposed Provision: 20,000 square feet and 100 feet wide at OHWM and setback for all newly created lots.

Public Comments:

- Requiring minimum lot width at OHWM and setback line precludes development of many irregular lots – use only lot width at OHWM
- Don't increase lot size as density is good – more infrastructure, unaffordable waterfront
- Increase lot size – Increase lot size and width to meet habitat and natural scenic beauty objective
- Require combining of substandard lots in common ownership

Responses:

- No change to existing lot areas and widths. Maintain different sizes for sewered and unsewered lots.
- Many lakeshore lots were created before NR 115 was written and are non-conforming. This change allows some development of these lots without variances, but still requires compliance with impervious surface standards, etc. Combination of substandard lots in common ownership will not be required; however, provisions are now included that address how adjacent commonly owned lots smaller than the revised lot size requirements may retain their substandard status.

Minimum Setback

Purpose of section: Provide a minimum space between the water and structures for infiltrating runoff, for fish and wildlife habitat, and for some natural scenic features.

Current Provision: 75 foot minimum setback for structures; small number of exempted structures (piers, boat hoists, boathouses, open sided structures); allows setback averaging.

Proposed Provision: 75 foot minimum setback for structures; expanded exemptions for water-related purposes (fishing rafts, satellite dishes/antennas, utilities, flagpoles, water quality and habitat restoration structures).

Public Comment:

- Support for long-standing, well-understood 75 foot setback.
- Issue with method of measuring setback: (1) call for allowing measurement to extend to the foundation w/exceptions rather than the overhang/eaves, but allowing counties to be more restrictive; (2) concern about influence of a wetland boundary pushing setback further back
- Boathouse issues: Whether new boathouses should be allowed in the buffer; if so, comments supporting 250 square foot size and other comments stating not big enough allowance. Concern boathouse issue too big to include in this revision and that should be removed and addressed through separate legislation
- New setback reduction process: Apply to existing structures proposing substantial changes and apply to commercial as well as residential. Concern that definition of "unique property features" uncertain. Call for more data on impacts on ability to build on lots. Support for clear, limited setback reduction circumstances
- Concern that setback be considered in land division review to avoid creating lots w/o legal building locations.
- Both a concern that existing setback averaging process will be compromised or discontinued and support for its elimination

- Concern that broad "structure" definition will lead to setback requirements being imposed on recreational equipment
- Clarify which "best management practices" employed for exempted utilities w/in the setback
- Concern that "exempted structures" too broad
- Concern that DNR-County OHWM location discrepancy resolution process is included in the code
- Call to differentiate between urban and rural setbacks: Concern that a 75 foot urban setback will counter planning efforts to control sprawl through increasing density.

Responses:
The comments convey a wide range of perspectives and recommendations. The proposal maintains a balance between protection and development. While the concept of different setbacks for different waterways is attractive, a general reduction of the setback below 75 feet is not consistent with scientific data questioning whether water quality remedies can be engineered in small spaces and there is no substitute is available for the waterfront space required for survival of shoreland wildlife species.

- Exemption language from setback averaging provision and list of more specific exemptions not included. The exemptions included in the section support other statutes or codes, except for the boathouse provision.
- The boathouse exemption was determined based on comments from the 2 public hearings and our decision to minimize overall impacts to the shoreland buffer area. Thus, any new boathouse must be located within the allotted area for the access and viewing corridor. Piers and boat hoists are placed below the OWHM so do not need to be exempted here.
- Research shows that the area 35 feet from the OHWM is a critical area for the public trust in the waterway and it was decided that setback averaging should not apply to construction in this area. Property owners will have to apply for a variance to build closer than 35 feet from the OHWM regardless of the existing development pattern. Provision that at no time may the setback be less than 35 feet from the OHWM was added to the setback averaging rules

Shoreland Vegetation and Buffers

Response: Change title of subsection to "Vegetation" to more accurately reflect the content of the section.

Purpose of section: This provision addresses the three major goals of shoreland management - water quality, fish and wildlife habitat and natural scenic beauty. The vegetation section has been updated to remove uncertainty and ensure protection of Wisconsin's waterways by controlling erosion and sedimentation and preserving the natural scenic qualities which provide vital habitat for shoreland wildlife.

Current Provision: Cutting of trees and shrubbery is regulated to protect natural beauty, control erosion and reduce the flow of effluents, sediments and nutrients from the shoreland area.

1. In the strip of land 35 feet wide inland from the ordinary high-water mark, no more than 30 feet in any 100 feet shall be clear-cut.
2. In shoreland areas more than 35 feet inland, trees and shrub cutting shall be governed by consideration of the effect on water quality and consideration of sound forestry practices and soil conservation practices.
3. The tree and shrubbery cutting regulations required by this paragraph shall not apply to the removal of dead, diseased or dying trees or shrubbery.

Proposed Provision:
Primary buffer – Property owners shall preserve or establish, and maintain a buffer of native shoreland vegetation in the area that extends 35 feet inland from the ordinary high-water mark under the following circumstances:

1. When a new principal structure is constructed
2. When required under NR 115. 21 (mitigation)
3. When required by a county's ordinance

Secondary buffer – As a general requirement everywhere, property owners shall preserve or establish, and maintain, a secondary buffer of native or nonnative, non invasive, ground layer vegetation, and including trees and shrubs from the primary buffer to the structural setback for the same conditions as the primary buffer.

Viewing and access corridor – 40 feet or 30% (whichever is less) for the first 200 feet of frontage or 200 feet or 20% (whichever is less) for greater than 200 feet of frontage.

Exemptions – Specific exemptions are created for agricultural practices and farm drainage ditches, Forest management activities, natural areas management activities; dam, levee, utility and roadway maintenance and temporary access.

Public Comment:

- Opposed to mandatory vegetation buffer requirements for all new principal structures.
- Opposed to the reduction in access size for lots less than 100 feet of frontage.
- Tall grasses may increase health and safety risks.
- Conflict in Department regulations NR 115 requiring buffers and DNR forestry requiring clearing around structures for fire safety.
- 35 foot buffer is inadequate, support 50 foot buffer.
- Proposed rule should not preclude additional cutting if done in accordance with an approved forest management or shoreline vegetation management plan.
- There should be an emphasis on maintaining the 35-foot primary buffer with natural vegetation.
- The requirement for buffers provides excellent habitat, water quality protection and ensures improved waterfront aesthetics.
- This is one of the most important aspects of NR 115, and yet, the importance of vegetated buffers for stormwater infiltration, habitat and natural scenic beauty is assumed, but not described anywhere in the new code. Sections 1 (a) and (b) should be combined under an intent section and instead of referring to "sound forestry and soil conservation practices," require compliance with BMPs for shoreland areas established by the DNR Forestry Division.
- Support the 35 foot primary buffer to protect habitat, however, stronger reference to habitat is needed and more intent/purpose/direction language on vegetation management.
- Vegetation removal and management should be combined applying the same performance standards to both.

Responses:

- The goal is to not lose additional existing shoreland buffers and the hope is to gain more shoreland buffers through volunteer restorations or through mitigations. This proposal does not require any existing property owners to "stop mowing their lawns", but does clarify that preservation of existing buffers, except in the area of the access and viewing corridor, is critical to the health of the water body.
- A minimum 35 foot vegetation buffer size is maintained because smaller buffers don't offer adequate protection for water quality, wildlife habitat and natural scenic beauty. Riparian vegetation is the most critical ingredient of lake and river habitat. Although researchers have estimated that animal habitat can be affected up to 1,500 feet away from human activities and structures, it may be possible to limit the impact of these disturbances by preserving and restoring shoreland vegetation. Ninety-percent of rare species depend on the shoreland zone for all or part of their life cycle. Riparian habitat cannot be replaced anywhere other than at the lake or stream edge.
- References to primary and secondary buffers have not been included; concern existed that including that language would have created non-conforming buffers.
- An upper limit or cap on total width was needed to allow reasonable access but to reduce the impact on habitat, water quality, natural scenic beauty, etc. Access and viewing corridor width is capped at 200 feet for all properties.
- The new language attempts to further clarify what vegetation removal can be done, but any removed vegetation must be replaced with comparable native species in the same area.

Land disturbing construction activities

Purpose of section: Reduce sediment, nutrient and stormwater runoff impacts from construction immediately adjacent to lakes and streams

Current Provision: "*Filling, grading, lagooning, dredging, ditching, and excavating* may be permitted only in accordance with the provisions of sub. (2), the requirements of ch. 30, Stats., and other state and federal laws where applicable, and only done in a manner designed to minimize erosion, sedimentation, and impairment of fish and wildlife habitat."

Proposed Provision: Counties must establish a permit system to control erosion and sedimentation. Counties may choose to exempt projects with state permits under ch. 30 or NR 216. Counties may act as agent of DNR, using county permit to simultaneously grant state approval if MOA (memorandum of agreement) developed and approved.

Public Comment:

- General support for regulation: water quality protection; enables addressing of regional land differences (soils, slopes)
- Standard should include minimum (threshold) area, slope or other standards for land disturbing activities that require county permits and a standard for determining compliance (set performance standard similar to NR 151).
- Include language to enable counties to issue permits for those less than the minimum threshold mentioned above
- Counties should not be responsible for issuing separate permits (i.e. duplicative erosion control permit) for land disturbance. Suggest one comprehensive zoning permit for structure construction that includes erosion control. Exempt those subject to UDC permitting.
- Beyond ch. 30 and NR 216, counties should not be able to exempt under this standard
- Don't allow counties to exempt grading

Response:
Entire section not included in the code. The goals of the section are met by the Land division review section. And, the existing "*filling, grading, lagooning, dredging, ditching, and excavating*" language was not changed, except that a natural scenic beauty design requirement was added.

Impervious Surfaces

Purpose of section: Provide a minimum amount of area to preserve space for infiltrating runoff, for fish and wildlife habitat, and avoid complete predominance of artificial features.

Current Provision: Current rule contains no impervious surface provisions

Proposed Provision: For new development, if 10% of the area within 300 feet of the OHWM is covered by impervious surfaces mitigation is triggered; no more than 20% coverage is allowed. Existing development may have up to 15% impervious surface coverage before triggering mitigation and also may not have more than 20% coverage. No expansions are permitted in primary buffer or closer to the water if setback not met. Unlimited maintenance and repair is allowed without conditions.

Public Comment:

- Allow expansion of impervious surface in primary buffer in exchange for mitigation - prohibiting of expansion of impervious surface in primary buffer limits usability of home and value
- Impervious surface limits too restrictive
- Eliminate or modify impervious surface thresholds

- Unclear what surfaces are included
- Don't include public or private streets

- Clarify that trigger and cap have an effect only when expanding – not automatic on exceedance
- Total too small
- Use other ways to manage runoff

- Keep impervious surface limits:
  - Caps already exceed scientifically determined threshold of ecological effect
  - 20% cap should be absolute
  - Apply caps to entire shoreland zone
- Allow counties the option of keeping the 50% rule

Response:

- Unlimited maintenance and repair will still be allowed without mitigation.
- The proposed code language tries to simplify the implementation and regulation of impervious surfaces. It now includes two provisions: 1) Lots with between 15% and 30% impervious surface cover in the shoreland zone must perform mitigation measures, and 2) No lot may exceed 30% impervious surface cover. Research has proven that this is a significant requirement to protect water quality.
- Only the impervious surface cover existing on a lot within the shoreland zone used for calculation.
- The section maintains that existing lots that exceed the impervious surface standards are not required to reduce their impervious surface cover to the 30% limit, nor are property owners required to do anything unless and until they propose to make changes to their property.
- Projects that exceed the impervious surface limit can still apply for variances.

Height Requirements

Purpose of section: To address the wildlife habitat and natural scenic beauty mandate of NR 115 this new standard limits the height of new development near the shore.

Current Provision: None

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

Public Comment:

- Opposition to state defined height limit: Natural beauty should be county defined; Addressed case-by-case; Apply only to pristine waters not to urban and rural development; Limits size of waterfront home, thus its value
- Limit height to 26' (two stories)
- No exception for commercial, agricultural, industrial, or *multi-family*/condominiums (exempt silos, farm buildings, smokestacks)
- Concern about point or vantage point from which 35' would be measured
- Would like this to include cellular towers
- Would like religious buildings (i.e. steeples) to be excluded
- Concern that counties won't have resources to enforce

Response:

- The height section does not allow the construction or placement of a structure on a lot within 75 feet of the OHWM unless the structure height does not exceed 35 feet.
- Counties requested flexibility to be able to address issues described in the public comment section and this proposal allows that flexibility. Not defining a vantage point from which to measure height will allow counties with exiting height limits to maintain their measurement methods.

Nonconformities

Purpose: To establish regulations and to bring about the conformity of existing nonconforming structures in the shoreland zone.

Current Provision: Routine maintenance and continued lawful use permitted of a building, structure or property existing at time of ordinance adoption. Alteration, addition or repair over the life of the structure may not exceed 50% of the equalized assessed value of the structure or building. Discontinued use of such a property for more than 12 months must come into conformity.

Public Comment: None

Response:

- Did not remove the nonconforming section as was proposed in the previous versions that went to public hearing. In order to simplify implementation of the code and based on the fact that the courts have issued several decisions that separate use and area variances, this section is proposed to remain in the code.
- The 50% rule language has been removed from the non-conforming use section.
- The previous code language used "use" and "area" standards interchangeably but recent court decisions have described different standards for these two variance types.
- This section also establishes minimum standards that should be easier to implement than the 50% rule. Now a county permit with a number of requirements must be issued in order to expand or relocate a nonconforming structure. This change acknowledges that very few nonconforming structures have been relocated under the current rule because numerous variances have been granted for projects like this. The goal of this change is to offset some of the impacts but require fewer variances.

Mitigation

Purpose of section: Mitigation is used to allow more development flexibility while continuing to achieve statutory objectives.

Current Provision: There is no mitigation in the current administrative code. Variances are the only relief mechanism. Mitigation is statutorily required in for gazebos and similar 200 square foot structures less than 75 feet from the water [s. 59.692(1)(v)].

Proposed Provision: The proposal provides choices among mitigation measures when dimensional standards are exceeded. The mitigation standards are performance based and in proportion to the amount by which the dimensional standard is exceeded.

Public Comment:
General support for the concept of mitigation with several concerns:

- Uncertainty of what will be required to meet the standards.
- A restored or protected shoreland buffer should meet the entire mitigation requirement.
- Structural expansions should not trigger mitigation.
- Expense of possible mitigation practices.
- Mitigation should be required for all projects that exceed dimensional standards

Response:
The mitigation section was not included in this proposal; however, the mitigation definition was added. And, mitigation is required when impervious surface cover in the shoreland zone is increased so that total will be between 15% to 30% of the total shoreland cover, as well as being one of a number of requirements for the issuance of a permit to expand or relocate a nonconforming structure. This approach will allow counties more flexibility in how they choose to implement mitigation.

In the absence of a mitigation system, the result of unlimited modification of the shoreland zone would be increased public costs for treatment of nuisance levels of algae and aquatic plants, lake and stream restorations and reduced local revenues from visitors and lower property values.

Outside of the code, the Department will offer support to counties in developing mitigation options.

- Counties will be able to adopt the requirement of a full vegetation buffer restoration into their ordinances to satisfy mitigation. A naturally vegetated, functioning buffer will meet the protection goals of the code.
- The Department has developed a computer program that will help counties conclude whether mitigation measures meet the code-requirements.
- A number of counties have mitigation systems adopted into their ordinances. Pending Departmental review and approval, those systems may remain in use.

Land Division Review

Purpose of section: Provide an administrative mechanism to implement standards that manage density of structures to preserve space for infiltrating runoff, for fish and wildlife habitat, and avoiding a predominance of artificial features.

Current Provision: Review of 3 or more parcels of 5 acres each within 5 year period for factors including conformity to code provisions

Proposed Provision: Must review creation of one or more lots 5 acres or smaller; must comply with lot size requirements and consider same factors as in current. Addresses lots divided by streams so that they may exist but requires that one side of stream have compliant building location

Public Comment:

- Retain current level of review to avoid increased local workload
- Factors for review beyond scope of shoreland zoning and are vague
- Should apply to lots created after date of ordinance
- Applies to lots that do not abut waterways

Response:
The changes to the Land division review section presented at the public hearings were not included. The existing code language has been successfully interpreted and implemented by all counties. Natural scenic beauty is a protected public trust use as determined by the Wisconsin Supreme Court. No change to the existing land division review language. Counties can be more restrictive at their own discretion.

Adoption of administrative and enforcement provisions

Purpose of section: Establish requirement for base level of operations and procedures essential to ensure meeting of minimum statewide standards to protect habitat, water quality and natural scenic beauty for users. Current rule includes many specific administrative requirements because it was adopted when many Wisconsin counties had no zoning provisions and general zoning law was not as well developed as it is today.

Current Provision: Current rule requires a variety of procedural and administrative measures.

Proposed Provision: No change from current rule

Public Comment:
Inspection, permit requirement and other administrative requirements increase workload for local governments.

- **Response:** In the interest of minimizing the revisions, this proposal retains the original code language. One provision was added. In addition to notifying the Regional office prior to the following, counties must also submit to the Department within 10 days permits to relocate or expand nonconforming principle structures; variances, special exception and conditional use permits; appeals for map or text interpretations and decisions to amend map or text ordinances.

Department Duties

Purpose of section: The section describes tasks required of the department in order to set and maintain minimum statewide standards and to assist local governments in effective administration of ordinances.

Current Provision: The rule requires a handful of basic tasks.

Proposed Provision: The proposed rule requires additional specific activities, including a model ordinance and mitigation design tool, in addition to existing required Department activities.

Public Comment: No comments.

Respouse:
In order to clarify the code amendment process that is already in place, this proposal requires that the Department shall issue a certificate of compliance stating the county shoreland ordinance complies with s. 59.692, Stats.

And, a time limit of 180 days was included in the provision requiring a non-compliant county to work with the Department to develop and adopt a compliant shoreland ordinance. The existing code does not include a time limit.

Note that in addition to duties specified by rule, the Department:

- Contracts annually with the UW-Extension's Center for Land Use Education for services to local zoning programs including training and handbooks, and
- Assigns specific statewide and regional staff to work closely with zoning offices and the Wisconsin County Code Administrators and similar groups to provide technical assistance and oversight under the current code, investing an average of $268,551 and more than 15,000 hours of staff time annually on shoreland zoning.

Cost of county administration

Purpose of section: Not a section of the code. There were a number of miscellaneous comments concerning the potential cost counties might incur implementing and enforcing the proposed code.

Current Provision: No language in the current rule on this issue.

Proposed Provision: No language proposed.

Public Comment:

- Counties do not have staff and funding required for adopting and administering new rule requirements.
- Oppose adoption until state funds are provided.

Response:
With the exception of Milwaukee and Menomonee Counties, all counties currently administer shoreland ordinances. Ordinance development and adoption are eligible for DNR Lake and River grants of $10,000 to $50,000 available on an annual basis. In the past, many counties have taken advantage of available grants to revise ordinances and improve administrative practices.

By rule the Department cannot provide or require funding or specific commitments of funds. However, the Department may be able to set priorities for its existing grant programs (see above) to fund ordinance adoption during the two-year adoption period and develop model grant proposals for ordinance adoption. Another possibility is for the Department to help develop and support legislative change to allow pass-through of state fees when local governments administer state requirements. And, whenever budget conditions allow, the Department might be able to support appropriate state investment in local shoreland zoning activities.

Additionally, the changes to the Administrative and enforcement provisions create more flexibility and may reduce county costs—less strict inspection schedule, county determined unincorporated areas-outreach plan, various methods for recording proceedings and removal of permit application site diagram review requirement. Some of the Department duties reduce local costs, such as providing a model ordinance, availability of the mitigation computer program and initial and ongoing training for local governments. And, an overall effort has been made to minimize the changes that will require massive ordinance amendments and additional staff workload.

Property rights and property values

Current Provision: Current rule caps modification of and structural repairs to nonconforming uses, which greatly constrains what owners can do on their shoreland properties. Although no section in the code explicitly deals with these issues, there were a number of miscellaneous comments claiming the revised rules will constitute a violation of private property rights and will constrain property values.

Proposed Provision: The proposed rule helps maintain property values by allowing much more maintenance, expansion and modification than the current rules. Greater flexibility is given to property owners, although there are constraints that require owners to make decisions about how extensively they will develop their shoreland property.

Public Comment:

- Property rights are given up through ordinance controlled building sites
- Property values will go down if constraints are placed on building

Response:
No change to provisions. Studies show that property values do not decrease in response to zoning ordinances and in many cases continue to increase under more restrictive zoning provisions. Searches revealed no data showing that property values have decreased as a result of the adoption of zoning standards.

Data from Wisconsin and across the nation demonstrate that water quality, fish and wildlife, and natural scenic beauty have a quantifiable positive effect on property values and recreation-based economic sectors:

- Shoreline frontage values in Vilas and Oneida counties increased an average of 7% to 12% when towns had zoning requirements with a minimum 200 feet of water frontage for lots, according to a University of Wisconsin study based on data collected on 892 vacant lakefront properties from 1986-1995. The study indicated that the zoning requirement, by preserving clean water, natural scenic beauty and peace and quiet, generated an economic gain that more than offset the economic loss resulting from the constraints on development.

- Housing prices were 32% higher if they were located next to a greenbelt buffer in Colorado. Nationally, buffers were thought to have a positive or neutral impact on adjacent property values in 32 of 39 communities surveyed.

- A California study found homes near stream restoration projects had a 3% to 13% higher property value than similar homes along un-restored streams. Most of the perceived value of the restored stream was due to the enhanced buffer, habitat, and recreation afforded by the restoration.

- The loss of property value due to lake water clarity declining below the regional average was estimated to be $256 to $512 million for 191 Maine lakes, a University of Maine study. The same study was used to determine potential future tax losses in one Maine Township where 60% of the 211 million property tax valuation is from lakefront property. A 3-foot decline in average minimum water clarity would cause a loss of $10.5 million, roughly 5% in total property value.

Local and state economies are affected by water quality, fish and wildlife and natural scenic beauty, as demonstrated by studies in Wisconsin and elsewhere. The following data show that the presence of water resources of good quality contribute positively to local economic activity:

- Scenic beauty and relaxation were the top reasons tourists gave for visiting Wisconsin and spending $11.4 billion in the state in 2001. Tourism supported 380,000 full-time jobs and generated nearly $1.8 billion in revenues for state and local governments.

- Without state and local revenues yielded from travel expenditures, each household would have to pay an additional $932 in taxes to maintain existing services.

- Each year more than 1.5 million anglers spend 17 million days fishing in Wisconsin. They spend $1.1 billion directly on fishing related expenses which generates more than $2.1 billion in economic activity.

- Sport-fishing supports 30,000 jobs and generates more than $75 million in tax revenues for the state for use on critical services like education and health care.

- 400 Wisconsin business executives surveyed in 2000 gave Wisconsin its highest rankings relative to other states for its quality of life, government services, and loyalty to area. Availability and quality of water were the highest ranked quality of life topics.

Searching revealed no data showing that tax revenues or jobs are negatively affected by zoning limitations.

Private property rights are fundamental to American society and are recognized in the proposed rule (e.g., provisions increasing flexibility for continued use of existing buildings and substandard lots; proposed standards do not strictly adhere to scientific thresholds for water quality or habitat impacts). Socially and legally, the right to use property is not so absolute that it allows the right to harm others (*Just v. Marinette,* 1972). With the importance of water resources to Wisconsin's economy and culture, the state's Constitution, legislative, judicial and administrative systems treat lakes and streams as if they are owned by all, seeks to maximize the benefits for all (Hixon v. PSC).

The changes in this proposal are made in part in response to the number of variances that are being applied for and issued. This proposal may allow the expansion or reconstruction of non-conforming structures, but will also protect the public trust and thus protect property values.

Cost to Property Owner

Current Provision: No language in the current rule on this issue.

Proposed Provision: No language proposed.

Public Comment:
Concern expressed that code compliance will increase costs for property owners to develop or improve their waterfront properties.

Response:
No changes made to the proposed code. The revision, while it offers more flexibility than current law, will result in waterfront property owners having to make calculated decisions when considering improving or making changes on their lots. Therefore, costs will differ for each property owner based on their individual

goals for their property and adjacent water body. In most cases, costs will not change from the cost of implementing the current code; permits will still be part of the equation and there are a variety of decisions one can make to vary costs.

Property owners may incur costs to mitigate, but only when they choose to modify buildings or surfaces in ways that exceed dimensional standards. The flexibility built into the code offers choices among mitigation practices that might range from zero cost, do-it-yourself measures to moderate cost landscaping. Rain gardens, a common mitigation measure for single-family residential lots cost between $3.00 to $5.00 per square foot if using purchased plants and volunteer labor and $10.00 to $12.00 per square foot if completed by a landscaper according to the publication Rain Gardens-A How to Manual for Homeowners (publication WT-776 2003, UW-Extension and Wisconsin).

In some cases, mitigation measures may save money for property owners. Corporate landowners can save between $270 to $640 per acre in annual mowing and maintenance costs when they keep open lands as a natural buffer instead of replacing it with turf. No engineering or other professional measurement, calculation or drawing is required to select or design mitigation measures, unless a property owner chooses to retain professional services. The Department will provide a computer-based mitigation design tool to provide specifications and instructions for mitigation measures for counties do not already have them or choose to develop their own. The tool requires that a property owner supply information about their lot (size, soil type, slope), impervious areas (how many, size, distance from water), and vegetation (ground cover, tree canopy) to receive alternative mitigation measures and instructions.

General Support

Public Comment:

- Widespread support in 2005 (rule comments in favor 38,185, opposed 11,369, neutral 1104)
- Substantial support in 2007 (rule comments in favor 1438, too permissive 918, support and opposed parts 383, neutral 111)
- Current rule is out-of-date
- Proposed rule is a substantial improvement
- Rule not protective enough
- Adhere to scientific parameters
- Regulations necessary to prevent pollution, to protect wildlife habitat and ground water
- Revisions follow proactive counties
- Provides platform and opportunities for partnerships.

Response:

Substantive comments on specific provisions not offered here, thus rule will be promulgated with the modifications discussed in provision sections above. In 2005, three times as many comments indicated support over dissent or neutrality. Fewer comments were submitted in support of the 2007 revisions, with fewer total comments overall: approximately 50,000 in 2005 and 8900 in 2007. Wisconsin statutes require the Department to set minimum statewide standards to protect water quality, fish and wildlife habitat and natural scenic beauty (s. 281.35, Wis. Stats.). While some supporters prefer more restrictive standards or explicit adherence to scientifically derived parameters (e.g., impervious surface), the rule follows the scientific direction while, as a matter of equity, recognizing and not seeking to reverse the current level of development along Wisconsin's lakes and streams.

General Opposition

Public Comment:

- Not protective enough
- Greater opposition to revision than support (rule comments opposed 5923, support and opposed parts 383, in favor 1438, too permissive 918, neutral 111)

- Oppose wrapping currently unregulated items into code: camping trailers, fences, patios, retaining walls, driveways, sidewalks [NOTE: These structures— camping trailers, fences, patios, retaining walls, driveways, sidewalks— actually are currently regulated.]
- Concern regarding nature of the data/scientific literature: improved water quality claims and whether studies cited are peer reviewed, controlled, published, verified
- Perception of inconsistencies between what is required of small time shoreland owners and the "more powerful", such as airports, wealthy shoreland owners, certain DNR/government programs, other land-uses beyond shoreland in watershed
- Concern that this perceived one-size-fits-all-approach won't work statewide
- Too complex

Response:
Substantive comments on specific provisions not offered here, thus rule will be promulgated with the modifications discussed in provision sections above. Commenters opposed the revision claiming it does not offer enough shoreline protection, while others oppose its restrictiveness. Some oppose the concept of regulating shoreland development altogether. However, the department has a statutory requirement to set minimum statewide shoreland zoning standards that meet standards set by the legislature. Modern, sustainability-focused landscape practices would better meet the statutory objectives while providing additional landowner flexibility and so the Department has an affirmative duty to complete updating this rule.

EA ATTACHMENT 2

NR 115 2005 PUBLIC HEARING COMMENT SUMMARY

This document is a summary of the approximately 50,658 comments from nearly 12,000 individuals which were received during the public comment period in the summer of 2005. This summary does not contain each individual comment received. For a copy of the complete comment database please contact Gregg Breese at Gregory.breese@wisconsin.gov or (608) 261-6430.

DEFINITIONS AND APPLICABILITY

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

SETBACKS

11 Specific Opposition Issues

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

2 Specific Issues of Support

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

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

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

LAND DIVISION

2 Specific Opposition Issues

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

Additional Comments

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

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

LOT SIZE

4 Specific Issues of Support

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

4 Specific Opposition Issues

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

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

Additional Comments

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

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

VEGETATIVE BUFFERS

7 Specific Issues of Support

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

5 Specific Opposition Issues

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

Additional Comments

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

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

IMPERVIOUS SURFACES

3 Specific Issues of Support

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

3 Specific Opposition Issues

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

Additional Comments

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

LAND DISTURBANCES

3 Specific Issues of Support

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

3 Specific Opposition Issues

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

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

Additional Comments

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

NONCONFORMING

5 Specific Issues of Support

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

9 Specific Opposition Issues

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

Additional Comments

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

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

Points to Ponder

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

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

MITIGATION

2 Specific Issues of Support

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

3 Specific Opposition Issues

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

Additional Comments

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

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

EA ATTACHMENT 3

NR 115 FOCUS GROUP MEMBERSHIP

IMPERVIOUS SURFACE FOCUS GROUP

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

MITIGATION FOCUS GROUP

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

IMPLEMENTATION FOCUS GROUP

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

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

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

EA ATTACHMENT 4

NR 115 WORK GROUP MEMBERSHIP

AGRICULTURE WORK GROUP

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

ALTERNATIVE DEVELOPMENT WORK GROUP

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

FORESTRY/NATURAL LANDS WORK GROUP

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

RECREATION AREAS WORK GROUP

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

URBANIZED WATERS WORK GROUP

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

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

EA ATTACHMENT 5

NR 115 ADVISORY COMMITTEE MEMBERSHIP

LOCAL GOVERNMENT REPRESENTATIVES

Wisconsin County Code Administrators

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

County Planning Zoning and Committee Members

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

Municipal Associations

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

PUBLIC RESOURCE REPRESENTATIVES

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

RIPARIAN OWNER REPRESENTATIVES

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

ACADEMIC REPRESENTATIVES

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

PRIVATE BUSINESS REPRESENTATIVES

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

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

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

EA ATTACHMENT 6

SUMMARY OF RULE REVISION ACTIVITIES

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

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

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

January 19, 2006	WCCA Executive Board Meeting - presentation and discussion on the revision to NR 115
February 7, 2006	Northern Region Zoning and Land Conservation Meeting - presentation and discussion on the revision to NR 115
March 29-31, 2006	WCCA Spring Conference - presentation and discussion on the revision to NR 115
April 6, 2006	WAPA Spring Conference - presentation and discussion on the revision to NR 115
April 20-22, 2006	Wisconsin Association of Lakes annual convention - presentation and discussion on the revision to NR 115
April 21-23, 2006	Lake Home and Cabin Show- Minneapolis – information available on the rule revision also a sign up sheet for updates on the revision
April 28-30, 2006	Lake Home and Cabin Show – Milwaukee - information available on the rule revision also a sign up sheet for updates on the revision
June 8, 2006	Advisory Committee Meeting – discuss public hearing outcome, disseminate comment summary, outline process and discuss potential policy modifications
June 14, 2006	Shoreland and Shallows Summit – Discussions on shoreland management in a broader context in relation to other environmental programs related to the near shore area.
July 20, 2006	Coastal Workshop in Ashland - presentation and discussion on the revision to NR 115
July 25, 2006	Release update: "Effort to update shoreland protection rules enters new phase-groups to focus in on areas citizens criticized in original proposal"
August 1, 2006	Impervious surface focus group meets
August 2, 2006	Mitigation focus group meets
August 30, 2006	Mitigation focus group meets
August 31, 2006	Impervious surface focus group meets
October - December 2006	County shoreland zoning amendment survey and analysis
October 10-12, 2006	Meetings with 6 NW counties on the revisions to NR 115
October 17-19	Meetings with 5 NE counties on the revisions to NR 115
October 24-26	Meetings with 5 centrally located counties on the revisions to NR 115
November 8, 2006	Release update: "Shoreland protection rule revision process moves forward-focus groups finalize recommendations"
February 13, 2007	Northern Region Zoning and Land Conservation Meeting - presentation and discussion on the revision to NR 115
February 27, 2007	Implementation focus group meets
March 13, 2007	West Central Zoning Administrators meeting - presentation and discussion on the revision to NR 115
March 15, 2007	Wisconsin Campground Owner's Association annual meeting - presentation and discussion on the revision to NR 115
March 21, 2007	Implementation focus group meets
March 28-30, 2007	WCCA Spring Convention - presentation and discussion on the revision to NR 115
April 26-28, 2007	Wisconsin Association of Lakes annual convention – discussion on the revision to NR 115
May 22-23, 2007	Request authorization for a second round of public hearings from the Natural Resources Board.
June 2007	Preparation of "County Shoreland Protection Program Funding Opportunities" fact sheet for hearings
July 2007	Press Release: "Public hearing set on update of shoreland development rules"
July 24, 2007	Public hearing in Wausau
July 25, 2007	Public hearing in Rhinelander
July 26, 2007	Public hearing in Rice Lake
July 31, 2007	Public hearing in Tomah
August 2, 2007	Public hearing in Green Bay
August 7, 2007	Public hearing in Waukesha
August 8, 2007	Public hearing in Stoughton

August 15, 2007	Public hearing in Oshkosh
August – October 2007	Public comments entered into database
October 2007	"Frequently Asked Questions about the Proposed NR 115 Revision" prepared
October – November 2007	Department prepares response to public comments
December 2007	List of mitigation options prepared based on approved county shoreland ordinances statewide
February 2009	Final Redraft of NR 115, Environmental Analysis and Fiscal note completed.

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

Fiscal Estimate — 2009 Session

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

Subject
Wisconsin's Shoreland Protection Program

Fiscal Effect
State: ☒ No State Fiscal Effect
☐ Indeterminate

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

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

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

Local: ☐ No Local Government Costs
☒ Indeterminate

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

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

Affected Chapter 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

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

State Fiscal Impact

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

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

Local Fiscal Impact

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

Counties will incur one-time expenditures to revise shoreland zoning ordinances to reflect the new statewide minimum standards. However, after this initial increased workload and expense, the Department expcets that the administrative burden of the zoning provisions will be less time-consuming and cost less than the current standards.

Long-Range Fiscal Implications

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

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	04-17-09

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

Fiscal Estimate — 2009 Session

Page 2 Assumptions Narrative Continued

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

Assumptions Used in Arriving at Fiscal Estimate – Continued

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

Fiscal Estimate — 2009 Session

Page 2 Assumptions Narrative Continued

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

Assumptions Used in Arriving at Fiscal Estimate – Continued

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

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

Fiscal Estimate Worksheet — 2009 Session

Detailed Estimate of Annual Fiscal Effect

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

Subject

Wisconsin's Shoreland Protection Program

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

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

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

Net Annualized Fiscal Impact

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

Prepared By:	Telephone No.	Agency
Joe Polasek	266-2794	Department of Natural Resources
Authorized Signature	Telephone No.	Date (mm/dd/ccyy)
	266-2794	04-17-09

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

The Wisconsin Natural Resources Board proposes an order to: repeal NR 115.03 (12), NR 115.05 (1) and (2); to repeal and recreate NR 115.01; to renumber NR 115.03 (1) and NR 115.05 (5); to renumber and amend NR 115.05 (3), (4) and (6); to amend NR 115 (title), NR 115.02, NR 115.03 (intro), NR 115.05 (title), NR 115.06 (2) and (3); and to create NR 115.03 (1d), (1p), (1t), (3m), (4g), (4r), and (7m), NR 115.04 and NR 115.05 (4) (hm); relating to minimum standards for county shoreland ordinances.

WT-28-04

Analysis prepared by the Department of Natural Resources

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

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

Plain Language Rule Analysis:

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

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

Authority
The proposed amendments to ch. NR 115 are intended to allow a county more flexibility in how they regulate land use in shorelands, and to give shoreland property owners more land use options, while still protecting the public interest in navigable waters and adjacent shorelands. Section 281.31(6), Stats., provides: "Within the purpose of sub. (1), the department shall prepare and provide to municipalities general recommended standards and criteria for navigable water protection regulations and their administration." Section 59.692(1m), Stats., provides that each county shall zone by ordinance all shorelands in its unincorporated area. Section 59.692 (1) (c), Stats., defines "shoreland zoning standard" to mean "a standard for ordinances enacted under this section that is promulgated as a rule by the department." Section 227.11(2)(a), Stats., gives the Department the authority to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

Revision Rationale
In response to the increasing impacts on public waters from adjacent shoreland development, the amount and intensity of development today in comparison to 40 years ago and the resulting pressures on our

public resources from private land owners and water recreationalists alike, the state launched a broad-based effort to update the shoreland protection standards originally promulgated in 1968. NR 115 was created to protect water quality, fish and wildlife habitat and scenic beauty along navigable lakes and rivers by establishing statewide minimum standards including lot sizes, building setbacks from the water's edge, and limits on tree removal. Controlling the density of development along the waters and creating a buffer around them was the best management practice of the time. After 40 years, the way in which we develop the land and the associated pressures on the resource has drastically changed. Instead of small summer cottages, waterfront owners are building year-round, much larger homes. The lots that were created years ago may not be capable of handling the increased stress without compromising the integrity of the very resource that draws our attention in the first place. Change is needed to clarify and update standards, provide flexibility for property owners, offset development impacts to better protect the water resources, and simplify implementation of standards through local shoreland ordinances.

Revision Process

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

These amendments are the result of over 5 years of work by this group and numerous opportunities for public comment. The Department held 8 public hearings in July and August of 2007, 11 public hearings in July and August of 2005 and 8 listening sessions in the fall and winter of 2003. All venues were an opportunity for the public to review and comment on the draft proposals generated together by the Department and the Advisory Committee.

Listening sessions were added as an additional step in the traditional rule revision process because the Department recognized this issue needed special consideration and debate in an open, informative, honest and participatory forum. Over 850 people attended eight listening sessions that were held around Wisconsin in November and December 2003.

As a requirement, public hearings are held to generate public comment. The Department held two rounds of public hearings in 2005 and 2007, totaling 19 public hearings around the state. Over 1,000 people attended the hearings in 2005 and during the public comment period over 50,000 comments were collected from nearly 12,000 individuals. 2007 public comment period yielded approximately 9,000 comments from about 2,400 individuals. A 2005 public hearing comment summary and 2007 response to comment document can be found as attachments to the Environmental Assessment provided for this rule revision.

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

Four main themes emerged from the public comments regarding NR 115 revisions:

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

Major provisions and new requirements

Major provisions of the proposal include changes to vegetation management in the first 35-feet and changes to regulation of structures within the shoreland setback. New requirements include establishment of impervious surface standards, and the removal of the 50% rule for nonconforming structures. The new standards will allow counties to regulate a structure based on its impact to the resource, not how the structure was built. Finally, mitigation requirements are added to the code to help balance the flexibility provided in this chapter.

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

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

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

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

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

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

Michigan
The State of Michigan has a wild and scenic rivers protection program to provide special protection to designated rivers. This program is managed very similar to other wild and scenic river protection programs nationwide. The protection standards are outlined in Natural River Zoning Rule 281 which outlines standards for river setbacks, minimum lot widths, special vegetation management standards, and

nonconforming structure improvements. Additional activities that may have potential impacts to the public trust, riparian rights, or may impair or destroy the waters or other natural resources of the state, including inland lakes and streams, the Great Lakes, wetlands, and groundwater, are regulated by the Department of Environmental Quality.

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

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

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

Summary of Factual Data:
This rule revision was the result of scientific analysis, literature summaries, advisory committee meetings, listening sessions, extensive public comments and formal public hearings that spanned over six years. This was a collaborative and comprehensive effort that began by collecting and evaluating data on local experiences administering the existing rule, as well as newer scientific information relevant to the impacts of shoreland development.

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

A 1997 Department study "Effectiveness of Shoreland Zoning Standards to Meet Statutory Objectives: A Literature Review with Policy Implications" showed that existing shoreland standards were not adequately achieving the statutory objectives of the program to protect critical fish and wildlife habitat, natural scenic beauty, and water quality of lakes and streams. Scientific studies during the 1990's found that fish and insect populations and water quality decline dramatically when watershed impervious surfaces reach 8-12%. A northern Wisconsin study found significant declines in populations of green frogs and key bird species on developed shorelines. When purchasing waterfront property, people inherently value clean water, plentiful wildlife and scenic vistas. A study in Maine found that waterfront property values would decline by 5% with a three-foot decline in lake water clarity. More details on these and other supporting studies are provided in the Environmental Assessment for this rule revision.

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

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

Agency contact person: Gregg Breese (608) 261-6430 gregg.breese@wisconsin.gov

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

WISCONSIN'S SHORELAND ~~MANAGEMENT~~ PROTECTION PROGRAM

SECTION 2. NR 115.01 is repealed and recreated to read:

NR 115.01 Purpose. Section 281.31, Stats., provides that shoreland subdivision and zoning regulations shall: "further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty." Section 59.692, Stats., requires counties to effect the purposes of s. 281.31, Stats., and to promote the public health, safety and general welfare by adopting zoning regulations for the protection of all shorelands in unincorporated areas that meet shoreland zoning standards promulgated by the department. The purpose of this chapter is to establish minimum shoreland zoning standards for ordinances enacted under s. 59.692, Stats. for the purposes specified in s. 281.31(1), Stats., and to limit the direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland and upland wildlife habitat; and natural scenic beauty.

SECTION 3. NR 115.02 is amended to read:

NR 115.02 Applicability. The provisions of this chapter ~~are applicable~~ apply to county regulation of the use and development of unincorporated shoreland areas, and to annexed or incorporated areas except as provided in s. 59.692(7), Stats. 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 ~~and~~ or repair of state highways and bridges~~,~~ carried out under the direction and supervision of the Wisconsin department of transportation ~~are~~ is not subject to local shoreland zoning ordinances~~,~~ if s. 30.2022 (1), Stats., applies.

Note: Under section 59.692(7), Stats., areas annexed after May 7, 1982 and areas incorporated after April 30, 1994 are generally subject to the shoreland zoning ordinances in effect on the date of annexation or incorporation.

SECTION 4. NR 115.03 (intro.) is amended to read:

NR 115.03 Definitions. For the purpose of this chapter:

SECTION 5. NR 115.03 (1) is renumbered as NR 115.03 (1h).

SECTION 6. NR 115.03 (1d), (1p), (1t), (3m), (4g), (4r), and (7m) are created to read:

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

(1p) "Building envelope" means the three dimensional space within which a structure is built.

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

(4g) "Impervious surface" 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.

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

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

SECTION 7. NR 115.03 (12) is repealed.

SECTION 8. NR 115.04 is created to read:

NR 115.04 Shoreland-wetlands. (1) ESTABLISHMENT OF SHORELAND-WETLAND ZONING DISTRICTS. Counties shall adopt shoreland ordinances that include zoning regulations for shoreland–wetland zoning districts.

(2) AMENDMENT OF SHORELAND-WETLAND MAPS AND ZONING DISTRICTS. (a) *County review of wetland inventory map amendments.* After the department amends final Wisconsin wetland inventory maps:

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

2. If the county believes that the amended maps are inaccurate, within 30 days of receiving the amended maps the county shall note discrepancies on the maps with an accompanying narrative explaining the amended problem areas and return a copy of the notated map and narrative to the department.

3. The department shall, at department expense, consult available soil survey maps and conduct on–site inspections, if appropriate, in order to evaluate the county recommendations, and shall then prepare final amended Wisconsin wetland inventory maps for that county.

Note: As of 1985 all counties adopted official wetland zoning maps and amendments occur as accuracy increases.

(b) *County amendment of shoreland–wetland maps and zoning districts.* 1. Within 6 months after receipt of final amended Wisconsin wetland inventory maps for that county from the department, a county shall zone all shorelands designated as wetlands on the amended Wisconsin wetland inventory maps in a shoreland–wetland zoning district. If a county fails to zone all shoreland-wetlands within this 6 month period, s. NR 115.06 (3) (b) shall apply.

2. Ordinance text and map amendments creating or amending shoreland–wetland zoning districts shall be referred to the county zoning agency for public hearing as required by s. 59.69 (5) (e) 2., Stats.

Note: Where an apparent discrepancy exists between a shoreland-wetland district shown on an amended map and actual field conditions, the county shall contact the department to determine if the amended 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 map amendment must be initiated within a reasonable period of time, not to exceed one year following the determination.

3. At least 10 days prior to the public hearing, the county shall provide the appropriate regional office of the department with a copy of the proposed text and map amendments and with written notice of the public hearing.

(c) *Amendment of shoreland-wetland zoning districts.* 1. Official ordinance amendments are required for any proposed change in shoreland-wetland zoning. Such amendments shall be made in accordance with provisions of s. 59.69 (5) (e), Stats. Official amendments to the ordinance text shall be made promptly. Provided the ordinance text is promptly amended, a county may amend its official map within a reasonable period of time not to exceed one year following the change in shoreland-wetland zoning.

2. The county clerk shall submit a copy of every proposed amendment to a shoreland-wetland zoning district to the appropriate regional office of the department within 5 days of the filing of such proposed amendment with the clerk.

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

4. In order to ensure that the shoreland protection objectives found in s. 281.31, Stats., will be accomplished by the county shoreland ordinance, a county shall not rezone a shoreland-wetland zoning district, or portion thereof, 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, or 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. Areas of special recreational, scenic or scientific interest, including scarce wetland types.

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

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

7. The appropriate regional office of the department shall be provided with all of the following:

a. A copy of the county zoning agency's findings and recommendations on the proposed amendment within 10 days after the submission of those findings and recommendations to the county board;

b. Written notice of the board's decision on the proposed amendment within 10 days after it is issued.

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

9. If the department has notified the county zoning agency that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subd. 4., that proposed amendment, if approved by the county board, shall not become effective until more than 30 days have elapsed since

written notice of the county board's approval was mailed to the department, as required by subd. 7. If within the 30-day period the department notifies the county board that the department intends to adopt a superseding shoreland zoning ordinance for the county under s. 59.692 (6), Stats., the proposed amendment shall not become effective while the ordinance adoption procedure is proceeding, but shall have its effect stayed until the s. 59.692 (6), Stats., procedure is completed or otherwise terminated.

(3) PERMITTED USES IN SHORELAND-WETLAND ZONING DISTRICTS. Within shoreland-wetland zoning districts, counties shall permit the following uses subject to the general requirements of s. NR 115.05, the provisions of chs. 30 and 31, Stats., and other state and federal laws, if applicable:

(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 and that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating.

(c) The practice of silviculture, including the planting, thinning and harvesting of timber, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done except as required to construct and maintain roads which are necessary to conduct silviculture activities, which cannot as a practical matter be located outside the wetland, and which are designed and constructed to minimize the adverse impact upon the natural functions of the wetland, or except as required for temporary water level stabilization measures to alleviate abnormally wet or dry conditions which would have an adverse impact on the conduct of silvicultural activities if not corrected.

Note: Local units of government, in the development and application of ordinances which apply to shoreland areas, must consider other programs of statewide interest and other state regulations affecting the lands to be regulated, i.e. regulations and management practices applicable to state and county forests and lands entered under the forest cropland and managed forest land programs.

(d) The pasturing of livestock and the construction and maintenance of fences, provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

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

(f) The construction and maintenance of duck blinds provided that no filling, flooding, draining, dredging, ditching, tiling or excavating is done.

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

(h) The construction and maintenance of piers, docks and walkways, including those built on pilings, provided that no filling, flooding, dredging, draining, ditching, tiling or excavating is done.

(i) The establishment and development of public and private parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game preserves and private wildlife habitat areas, provided that no filling is done and that any private wildlife habitat area is used exclusively for that purpose. The owner or operator of a new private recreation or wildlife area to be located in a shoreland-wetland zoning district shall be required to notify the county zoning agency of the proposed project before beginning construction. Ditching, excavating, dredging, dike and dam construction shall be allowed in wildlife refuges, game preserves, and private wildlife habitat areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

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

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

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

(L) The maintenance, repair, replacement, and reconstruction of existing town and county highways and bridges.

(4) PROHIBITED USES IN SHORELAND–WETLAND ZONING DISTRICTS. Any use not permitted in sub. (3) is prohibited in a shoreland–wetland zoning district unless the wetland or portion thereof is rezoned by amendment of the county shoreland zoning ordinance in accordance with s. 59.69 (5) (e), Stats., and the procedures outlined in sub. (2) (c).

SECTION 9. NR 115.05 (title) is amended to read:

NR 115.05 ~~Shoreland regulation standards and criteria.~~Minimum Zoning Standards for Shorelands.

SECTION 10. NR 115.05 (1) and (2) are repealed.

SECTION 11. NR 115.05 (3) is renumbered to NR 115.05 (1) and as renumbered is amended to read:

NR 115.05 (1) ESTABLISHMENT OF SHORELAND ZONING ~~REGULATIONS FOR SHORELAND AREAS~~ STANDARDS. The shoreland zoning ordinance adopted by each county shall ~~provide sufficient~~ sufficiently control ~~of the~~ use of shorelands to afford the protection of water quality as specified in chs. NR 102 and 103. At a minimum, the ordinance shall include all of the following provisions:

(a) *Minimum lot sizes.* 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.

1. 'Sewered lots.' Lots served by public sanitary sewer shall have a minimum average width of 65 feet and a minimum area of 10,000 square feet.

2. 'Unsewered lots.' Lots not served by public sanitary sewer shall have a minimum average width of 100 feet and a minimum area of 20,000 square feet.

3. 'Substandard lots.' 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:

a. 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.

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

c. The substandard lot or parcel is developed to comply with all other ordinance requirements.

4. 'Planned Unit Development.' A non-riparian lot may be created which does not meet the requirements of subd. 1. if the county has approved and recorded a plat or certified survey map including that lot within a planned unit development, if the planned unit development contains at least 2 acres or 200 feet of frontage, and if the reduced non-riparian lot sizes are allowed in exchange for larger shoreland buffers and setbacks on those lots adjacent to navigable waters that are proportional to and offset the impacts of the reduced lots on habitat, water quality and natural scenic beauty.

(b) *Building setbacks.* Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution. 1. 'Shoreland setback.' ~~Unless an existing development pattern exists,~~ Except where exempt under subd. 1m., a setback of 75 feet from the ordinary high-water mark of ~~an adjacent body of water~~ any navigable waters to the nearest part of a building or structure shall be required for all buildings and structures~~, except piers, boat hoists and boathouses~~. Where an existing development pattern exists, the shoreland setback for a proposed principal structure may be reduced to the average shoreland setback of

the principal structure on each adjacent lot, but the shoreland setback may not be reduced to less than 35 feet from the ordinary high-water mark of any navigable waters.

Note: A property owner may seek a variance to a dimensional standard of the county ordinance and a county board of adjustment may review the request pursuant to s. 59.694(7)(c), Stats.

1m. 'Exempt structures.' All of the following structures are exempt from the shoreland setback standards in subd. 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.

Note: This chapter does not prohibit repair and maintenance of boathouses located above the ordinary high-water mark.

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.

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. Comm 83, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.

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.

2. 'Floodplain structures.' Buildings and structures to be constructed or placed in a flood plain shall be required to comply with any applicable flood plain zoning ordinance.

3. 'Boathouses.' The use of boathouses for human habitation and the construction or placing of boathouses beyond the ordinary high–water mark of any navigable waters shall be prohibited.

(c) ~~*Trees and shrubbery*~~ *Vegetation*. ~~The cutting of trees and shrubbery shall be regulated to~~ To protect natural scenic beauty, fish and wildlife habitat, and water quality, ~~control erosion, and reduce the flow of effluents, sediments and nutrients from the shoreland area.~~, a county shall regulate removal of vegetation in shoreland areas, consistent with the following:

1. ~~In the strip of land 35 feet wide inland from the ordinary high water mark, no more than 30 feet in any 100 feet shall be clear-cut.~~The county shall establish ordinance standards that consider sound forestry and soil conservation practices and the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.

Note: In developing and applying ordinances which apply to shoreland areas, local units of government must consider other applicable law and programs affecting the lands to be regulated, e.g., law and management practices that apply to state and county forests and lands entered under forest cropland and managed forest land programs, and ss. 59.692(2)(a) and 59.69(4)(a), Stats.

2. ~~In shoreland areas more than 35 feet inland, trees and shrub cutting shall be governed by consideration of the effect on water quality and consideration of sound forestry practices and soil conservation practices.~~

3. ~~The tree and shrubbery regulations required by this paragraph shall not apply to the removal of dead, diseased or dying trees or shrubbery.~~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:

a. The county may allow routine maintenance of vegetation.

b. The county may allow removal of trees and shrubs in the vegetative buffer zone to create access and viewing corridors, provided that the combined width of all access and viewing corridors on a riparian lot or parcel may not exceed the lesser of 30 percent of the shoreline frontage or 200 feet.

c. 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 section 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.

d. 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 under the permit be replaced by replanting in the same area as soon as practicable.

Note: Information regarding native plants, shoreland and habitat management is available from the University of Wisconsin-Extension publications website: http://clean-water.uwex.edu/pubs/index.htm.

e. 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.

(d) *Filling, grading, lagooning, dredging, ditching and excavating.* Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of ~~sub. (2)~~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.

(e) *Impervious surfaces.* Counties shall establish impervious surface standards to protect water quality and fish and wildlife habitat and protect against pollution of navigable waters. County impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface within 300 feet of the ordinary high-water mark of any navigable waterway, and shall require all of the following:

1. 'Calculation of percentage of impervious surface.' Percentage of impervious surface shall be calculated by dividing the surface area of 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 portion of the lot or parcel that is within 300 feet of the ordinary high-water mark, and multiplied by 100.

2. 'Impervious surface standard.' A county may 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.

3. 'Maximum impervious surface.' A county may allow 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, provided that the county issues a permit that requires a mitigation plan approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines adequate to offset the impacts of the impervious surface 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 impervious surface being permitted. The obligations of the property owner under the mitgation plan shall be evidenced by an instrument recorded in the office of the County Register of Deeds.

Note: A property owner may seek a variance to a dimensional standard of the county ordinance and a county board of adjustment may review the request pursuant to s. 59.694(7)(c), Stats.

4. 'Existing impervious surfaces.' For existing impervious surfaces that were lawfully placed when constructed but that do not comply with the standards in subpar. 2. and 3., the property owner may do any of the following:

a. maintenance and repair of all impervious surfaces;

b. replacement of existing impervious surfaces with similar surfaces within the existing building envelope;

c. relocation or modification of existing impervious surfaces with similar or different impervious surfaces, 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 meets the applicable setback requirements in NR115.05(1)(b).

Note: For example this provision would allow an existing at-grade patio to be removed and replaced with a new building, if the new building meets the shoreland setback requirements.

Note: Nothing in this subsection shall be construed to supersede other provisions in county shoreland ordinances.

(f) *Height.* To protect and preserve wildlife habitat and natural scenic beauty, on or after the effective date of this section ...[Legislative Reference Bureau insert date], a county may not permit any construction that results in a structure taller than 35 feet within 75 feet of the ordinary high-water mark of any navigable waters.

~~(e)~~(g) *Nonconforming structures and uses.* 1. 'General rule for nonconforming uses.'~~Under s.~~ Pursuant to ss. 59.69 (10) (a) and 59.692 (2) (a), Stats., an ordinance enacted under those provisions may not prohibit the continuation of the lawful use of a building, structure or property, ~~existing at the time~~that exists when an ordinance or ordinance amendment takes effect, which is not in conformity with

the provisions of the ordinance or amendment~~, including routine maintenance of such a building or structure, shall~~ may ~~not be prohibited, but the alteration of, addition to, or repair, over the life of the building or structure, in excess of 50% of the equalized assessed value of an existing nonconforming building or structure may be prohibited. If a county prohibits alteration, addition or repair in excess of 50% of the equalized assessed value of an existing nonconforming building or structure, the property owner may either appeal the decision to the county board of adjustment and seek court review if the board's determination is unfavorable, under s. 59.694 (4) and (10), Stats., or petition to have the property rezoned under sub. (2) (e) and s. 59.69 (5) (e), Stats.~~

2. 'Nonconforming use of temporary structure.' The continuance of the nonconforming use of a temporary structure may be prohibited.

3. 'Discontinued nonconforming use.' 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.

4. 'Maintenance of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b)1. may be maintained and repaired within its existing building envelope. Maintenance and repair includes such activities as interior remodeling, plumbing, insulation, and replacement of windows, doors, siding, or roof.

5. ' Vertical expansion of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b)1. may be expanded vertically, provided that all of the following requirements are met:

a. The use of the structure has not been discontinued for a period of 12 months or more.

b. The existing principal structure is at least 35 feet from the ordinary high-water mark.

c. Vertical expansion is limited to the height allowed in NR 115.05(1)(f).

d. 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 include enforceable obligations of the property owner to establish or maintain measures that the county determines 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 expansion 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.

e. All other provisions of the shoreland ordinance shall be met.

Note: Other provisions include requirements such as impervious surface limitations.

Note: This code does not supercede s. 59.692(1s), Stats.

5m. 'Expansion of nonconforming principal structure beyond setback'. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b)1., may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements in par. (b)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 under par. (e)3.

6. 'Replacement or relocation of nonconforming principal structure.' An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b)1. may be replaced or relocated on the property provided all of the following requirements are met:

a. The use of the structure has not been discontinued for a period of 12 months or more.

b. The existing principal structure is at least 35 feet from the ordinary high-water mark.

c. No portion of the replaced or relocated structure is located any closer to the ordinary high-water mark than the closest point of the existing principal structure.

d. 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 replacement or relocation that will result in compliance with the shoreland setback requirement in par. (b)1.

e. 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 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 migitation plan shall be evidenced by an instrument recorded in the office of the County Register of Deeds.

f. The county shall issue a permit that requires that all other structures on the lot or parcel that do not comply with the shoreland setback requirement in par. (b)1. and are not exempt under par. (b)1m. to be removed by the date specified in the permit.

g. All other provisions of the shoreland ordinance shall be met.

Note: Other provisions include requirements such as height and impervious surface limitations.

Note: This code does not supercede s. 59.692(1s), Stats.

4.7. 'Boathouses.' The maintenance and repair of nonconforming boathouses which extend beyond the ordinary high-water mark of any navigable waters shall be required to comply with s. 30.121, Stats.

SECTION 12. NR 115.05 (4) is renumbered to NR 115.05 (2), and NR 115.05 (2) (intro) as renumbered is amended to read:

(2) ESTABLISHMENT OF LAND DIVISION REVIEW. Each 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 ~~should~~ shall be considered:

SECTION 13. NR 115.05 (5) is renumbered to NR 115.05 (3).

SECTION 14. NR 115.05 (6) is renumbered to NR 115.05 (4), and NR 115.05 (4)(intro) and (4)(h) as renumbered are amended to read:

NR 115.05 (4) ADOPTION OF ADMINISTRATIVE AND ENFORCEMENT PROVISIONS. The shoreland ordinance adopted by each county shall ~~provide for~~require all of the following:

NR 115.05 (4) (h) Written notice to the appropriate ~~district~~regional office of the department at least 10 days prior to any ~~hearings~~hearing on a proposed ~~variances~~ variance, special ~~exceptions~~ exception or ~~(~~conditional ~~use~~use~~)~~ permit, ~~appeals~~appeal for a map or text ~~interpretations~~interpretation, ~~and~~ map or text ~~amendments~~ amendment, and ~~submission to the same office of the department of copies of decisions on variances, special exceptions (conditional uses), appeals for map or text interpretations, and map or text amendments within 10 days after they are granted or denied~~copies of all proposed land divisions submitted to the county for review under sub. (2). Upon request of the Department a county shall provide to the appropriate regional office a copy of any permit issued under sub. (1)(g).

SECTION 15. NR 115.05 (4) (hm) is created to read:

NR 115.05 (4) (hm) Submission to the appropriate regional office of the department, within 10 days after grant or denial, of copies of any permit granted under sub. (1) (g), 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.

SECTION 16. NR 115.06 (2) is amended to read:

NR 115.06 (2) REVIEW AND APPROVAL OF SHORELAND ZONING AND LAND DIVISION ORDINANCES. When determining whether a shoreland zoning or subdivision ordinance or any subsequent amendment enacted by a county complies with s. 59.692, Stats., the department shall compare the ordinance and amendments with the minimum standards and requirements for shoreland regulation in this chapter.

(a) *Initial ordinance.* ~~Compliance with the requirements of s. 59.692, Stats., will be determined by the department by comparing the shoreland zoning and land division ordinance that has been enacted by a county with the minimum standards for shoreland regulation contained in s. NR 115.05.~~ The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with s. 59.692, Stats., and this chapter.

(b) *Amendments to ordinance.* The department ~~shall periodically reevaluate shoreland zoning and land division ordinances to ascertain their continuing compliance with s. NR 115.05. 1. A county shall keep its shoreland zoning ordinance current, effective and workable to retain its status of compliance.~~ and each county shall assure that the county shoreland ordinance continues to comply with this chapter by doing the following:

1. 'County duties.' A county shall keep its shoreland zoning and subdivision ordinances in compliance with s. 59.692, Stats., and this chapter by doing all of the following:

a. A county shall amend its shoreland and subdivision ordinances to meet the minimum standards in this chapter within two years after the effective date of this rule ... [Legislative Reference Bureau insert date].

b. Pursuant to s. NR 115.05 (4) (h) and (hm), a county shall provide the department notice of hearing on any proposed ordinance amendment and a copy of any decision denying or enacting an amendment.

2. 'Department duties.' a. The department may periodically reevaluate county shoreland zoning and subdivision ordinances for continuing compliance with s. 59.692, Stats., and this chapter.

b. The department shall review any ordinance amendment enacted pursuant to subd. 1.a. and shall issue a certificate of compliance when the amended ordinance, in the opinion of the department, complies with s. 59.692, Stats., and this chapter.

(c) *Proposed amendments to shoreland-wetland districts.* The department shall review all proposed amendments to ~~shoreland~~ shoreland-wetland zoning districts pursuant to s. NR ~~115.05 (2) (e)~~ 115.04 (2) to ~~ensure that~~determine whether an ordinance which is amended as proposed will ~~retain its status of compliance~~ comply with s. 59.692, Stats., and this chapter.

SECTION 17. NR 115.06 (3) is amended to read:

NR 115.06 (3) (a) *Failure to enact initial ordinance or amendments.* ~~Counties which do~~ A county that does not have a shoreland zoning ordinance and ~~land division~~ subdivision ordinance in effect or that fails to amend its ordinance as required by sub. (2) (b) 1. shall be deemed to be in noncompliance with s. 59.692, Stats., and this chapter. ~~The~~ Pursuant to s. 59.692 (6), Stats., and after notice and hearing, the department shall~~, pursuant to s. 59.692 (6), Stats.,~~ adopt an ordinance~~, after notice and hearing,~~ if a county fails to ~~either~~ do one of the following:

1. ~~Proceed with the drafting and enactment of~~ Draft and enact shoreland ~~regulations~~ and subdivision ordinances or required amendments within a ~~given~~ time period~~, or,~~ specified by the department.

2. ~~Contact~~ Contract with a consultant to draft the ~~regulations~~ shoreland and subdivision ordinances or required amendments and enact the ordinances within a ~~given~~ time period~~, or,~~ specified by the department.

3. Cooperate with ~~the staff of the~~ department staff to draft ~~the~~ shoreland and subdivision ~~ordinance~~ordinances or required amendments to be enacted by the county within a ~~given~~ time period specified by the department not to exceed 180 days. ~~All costs for such action by the department shall be borne by the noncomplying county~~.

(b) *Failure to meet minimum standards in initial ordinance or amendments.* Counties which have shoreland zoning and ~~land division~~ subdivision ordinances or amendments that the department has reviewed under sub. (2) and found do not meet the minimum standards ~~contained in s. NR 115.05~~ in this chapter shall be deemed to be in noncompliance with the requirements of s. 59.692, Stats., and this chapter, and the procedures in par. (a) shall apply. If a county fails to modify its ordinance to meet the minimum standards within 6 months after receipt of final amended Wisconsin wetland inventory maps for that county as required by s. NR 115.04 (2) (b), the department shall adopt an ordinance for the county, after notice and hearing, pursuant to s. 59.692 (6), Stats.

(c) *Extension of time.* The department may extend the time periods specified in pars (a) and (b) if it determines an extension is in the public interest.

(d) *Costs.* Pursuant to ss. 59.692 (6) and 87.30 (1) (c), Stats. the costs of any actions by the department under this subsection to adopt an ordinance or amendments shall be assessed against the county concerned and collected in substantially the same manner as other taxes levied by the state.

SECTION 18. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2)(intro.), Stats.

SECTION 19. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By_____
Matthew J. Frank, Secretary

(SEAL)