

## **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.<sup>1</sup>

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.

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<sup>1</sup> 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.<sup>2</sup> Table 1 summarizes common materials in natural and developed watershed and their roles.

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<sup>2</sup> 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.<sup>3</sup>

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.

<sup>3</sup> Ferguson, B. K. 1998. Introduction to Stormwater: Concept, Purpose, Design. New York: John Wiley & Sons, Inc.

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 buffers, set back 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 restoration of shoreland buffers and implementation of best management practices to control stormwater runoff, 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<sup>4</sup>

The short-term environmental effects on wildlife habitat are expected to be positive. Preserving shoreland vegetation, limiting land disturbing activities, setting structures away from the water's edge, controlling the

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<sup>4</sup> France, R. L., ed. 2002. Handbook of Water Sensitive Planning and Design. New York: Lewis Publishers.

density of shoreland development and decreasing runoff from impervious surfaces will all help limit impacts of shoreland development.

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. In 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.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup>

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 shoreland land disturbing activities 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.

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<sup>5</sup> 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.

<sup>6</sup> 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.

<sup>7</sup> 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.

### **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, 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.<sup>8</sup> 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.<sup>9</sup>

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 increased by 67% from 1981 to 2005, bringing more impervious surfaces that direct fertilizers and pollutants to the lake and stimulate the growth of invasive Eurasian milfoil.<sup>10</sup> 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.<sup>11</sup> A \$1 million restoration was completed in 2007. Proactive, more effective shoreland zoning 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.<sup>12</sup> These findings are supported by a

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<sup>8</sup> 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](http://greer.ecology.uga.edu/buffer_litreview.pdf)

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

<sup>10</sup> 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.

<sup>11</sup> Big Muskego Lake/Bass Bay Protection and Rehabilitation District. June 2004. *Big Muskego and Bass Bay Management Plan*.

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

Wisconsin study of nearshore sediment cores (measures historic macrophyte growth and decay) in both developed and undeveloped lakes.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

### **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.<sup>16</sup> Over 20 years ago researchers found that aquatic insect diversity drops sharply in streams where watershed impervious surface exceeded 10 to 15%.<sup>17</sup>

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.<sup>18</sup>

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.<sup>19</sup> 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).<sup>20</sup>

### **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.<sup>21</sup> 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.<sup>22</sup>

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

<sup>14</sup>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.

<sup>15</sup> 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.

<sup>16</sup> Center for Watershed Protection. 2003. *Impacts of Impervious Cover on Aquatic Systems.* Watershed Protection Research Monograph No. 1, March 2003, p.93.

<sup>17</sup> Klein, R. 1979. *Urbanization and Stream Quality Impairment.* *Water Resources Bulletin.* 15(4):948-963.

<sup>18</sup> 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.

<sup>19</sup> 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.

<sup>20</sup> 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.

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

<sup>22</sup> U.S. Fish & Wildlife Service. 1998. *1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, State Overview.*

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 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 includes 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 different mechanism for regulation than proposed in the rule. For this new provision, the Department would need to review and approve county developed initiatives to guarantee that they will be at least as protective as the method proposed in ch. NR 115.

### **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 five 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 around the state were held in summer 2007. 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 or electronic submittal. 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 excel 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 Toni Herkert at [toni.herkert@wisconsin.gov](mailto:toni.herkert@wisconsin.gov) or at (608)266-0161.

<b>NR 115 Issue</b>	<b>Neutral</b>	<b>In Favor</b>	<b>Too Permissive</b>	<b>Support and Oppose Sections</b>	<b>Opposed</b>
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
<b>Total Comments*</b>	<b>8945</b>				

\*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.

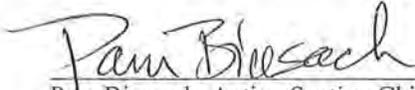
Formal response to comments and summary documents were developed for both public comment periods- see attachments 1 and 2. Many of the issues addressed in the 2007 revision to NR 115 are a response to the 2005 comments. The detailed analyses of the 2007 comments and department responses have informed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

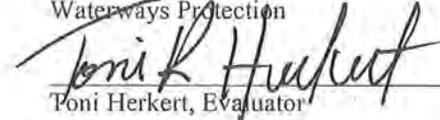
Specific to ch. NR 115 and the rule revision process, there will continue to be some controversy surrounding components of the rule such as shoreland vegetation and the new requirements for impervious surface standards and mitigation. Most of the uneasiness is derived from the fact that the concepts 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.

  
\_\_\_\_\_  
Pam Biersach, Acting Section Chief  
Waterways Protection

3-3-08  
Date

  
\_\_\_\_\_  
Toni Herkert, Evaluator

3/19/08  
Date

  
\_\_\_\_\_  
Russell A. Rasmussen, Director  
Bureau of Watershed Management

3/19/2008  
Date

Certified to be in compliance with WEPA

  
\_\_\_\_\_  
Director, OEEA (or designee)

02/21/2008  
Date

## **II. Issue Identification Activities and Agency Contacts**

### **A. Rule Revision Public Participation Process**

The NR 115 Advisory Committee was developed to aid 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 115 Advisory 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, and impervious surfaces.

#### **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 5 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  
Toni Herkert – Policy Coordinator, 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.<sup>23</sup>

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.<sup>24</sup>

<sup>23</sup> Quick, J. 1994. “The Public Trust Doctrine in Wisconsin.” Wisconsin Environmental Law Journal, Vol. 1, No. 1.

<sup>24</sup> *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.

Christensen, D., B. Herwig, D. Schindler, and S. Carpenter. 1996. "Implications of Lakeshore Residential Development on Coarse Woody Debris in North Temperate Lakes." Ecological Applications. Vol. 6, No. 4.

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.

Graczyk, D., Hunt, R., S. Greb, S. Buchwald, and J. Krohelski. 2003. Hydrology, Nutrient Concentrations, and Nutrient Yields in Nearshore Areas of Four Lakes in Northern Wisconsin, 1999 – 2001. U.S. Geological Survey.

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

Jennings, M., M. Bozek, G. Hatzenbeler, D. Fago, K. Schmude, K. Otis, R. Piette, R. Kahl, R. Hay, R. Sonntag, J. Coke, R. Chenowith, and T. Kapper. 1996. Shoreline Protection Study: A Report to the Wisconsin State Legislature. Wisconsin Department of Natural Resources, PUBL-RS-921-96.

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](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; requiring counties to set standards for multi-unit development, mobile home parks, and campgrounds; providing exemptions for certain activities from shoreland setback and shoreland vegetation standards and establishing impervious surface standards to replace the regulation of nonconforming structures with a standard based 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.

#### Section NR 115.09 – Land division review

- The requirement for land division review is changed from the creation of "3 or more lots" to the creation of "one or more lots" to ensure that all new lots created meet minimum lot size requirements. This standard was added to protect prospective property owners and ensure that all lots have a compliant building location.
- If new lots are created that are divided by a stream or river, one side of the lot shall have a compliant building location. This provision will safeguard property owners by ensuring a building location on the lot.

#### Section NR 115.11 – Lot size and development density

- Minimum lot size and density standards have changed eliminating a distinction between sewered and unsewered areas. The new minimum lot size for all lots created after the effective date of the rule is 20,000 square feet and a minimum width of 100 feet computed as the average width of the building setback line, the ordinary high water mark, and one other location measured within 300' of the OWHM.
- 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 are required to develop minimum lot size and density requirements for multi-family residential structures, mobile home parks and campgrounds.
- Counties may approve reduced non-riparian lot sizes for planned unit developments if the planned unit development plan includes larger shoreland buffers and larger setbacks on those lots adjacent to the water.

#### Section NR 115.13 – Minimum setback

- Language is added to address structures exempted by other state or federal laws from the minimum setback standards.
- Provisions are added to allow counties to exempt structures from the minimum setback if they meet certain requirements outlined in NR 115.13 (4).
- The construction of new dry boathouses is still exempted; however a maximum size of 250 square feet has been added to the rule.
- Standards are established to qualify a lot for a reduced setback if there is not a compliant building location and if the new setback is at least 50 feet.

#### Section NR 115.15 – Height Requirements

- A new section on structure height was added to protect and preserve the natural scenic beauty of lake and riverine environments.

#### Section NR 115.17 – Shoreland vegetation and buffers

- Language governing management of shoreland vegetation in the primary shoreland buffer is improved, resulting in a more functional buffer protecting habitat and water quality.
- Tree and shrubbery pruning is allowed. Removal of trees and shrubs may be allowed if exotic or invasive species, diseased or damaged, or if an imminent safety hazard, but must be replaced.
- Provisions are added to allow counties to exempt 6 types of activities from the shoreland vegetation provisions.
- A formula for the width of access corridors is provided, replacing the “30 feet in any 100 feet” provision, which was confusing if a lot had less than 100 feet of frontage. A second formula for lots with greater than 200 feet of frontage was also added to address larger developments adjacent to the water.

#### Section NR 115.19 – Impervious surfaces

- Development is regulated through the use of percentages of total impervious surface rather than through the use of a nonconforming structure provision. The total impervious surface coverage allowance within 300 feet of the ordinary high water mark is 10%, but may be exceeded up to a maximum of 20% total impervious surface cover if mitigation measures are implemented and maintained.
- Provisions are also included for counties to authorize impervious surface area coverage in excess of 20% to a maximum of 30% through a specific permitting system with qualifying requirements.
- Provisions are also included for shared impervious surfaces, expansion, enclosing existing impervious surfaces, replacements and relocation.

#### Section NR 115.21 – Mitigation

- The mitigation provisions are now performance standards to protect, preserve and enhance water quality and wildlife habitat while achieving natural scenic beauty.
- There is a water quality standard and a wildlife habitat standard that the counties will have to flesh out in their individual ordinances. The water quality standard will require infiltration of runoff. The habitat standard will require maintaining or restoring primary vegetation buffers.
- A provision on proportionality has been added to ensure the mitigation measures required will not outweigh the impacts of the proposed project.
- A computer program has been developed to help counties and/or property owners determine whether the performance standards have been met.

#### Section NR 115.23 – Land disturbing construction activities

- Section removed. Determined that Land division review standards meet the goals of this section.

#### **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 115.13 –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)
- Reasonable accommodations for disabled persons (federal Americans with Disabilities Act and Fair Housing Act, and Wisconsin Open Housing Law)
- Utilities (Comm 83, s. 196.491, Wis. Stats.)

Counties may permit structures within the shoreland setback if they are designed, constructed and maintained to minimize runoff to navigable waters and have as their fundamental purpose one or more of the following goals:

- To provide safe, pedestrian access to navigable waters, including public walkways or trails,
- To ensure public health and safety,
- To control significant, on-going erosion or slope stabilization,
- To maintain or improve fish and wildlife habitat, or
- To maintain or improve water quality

#### Section NR 115.15 – Shoreland vegetation

The following activities are exempt from the shoreland vegetation standards if all of the applicable conditions are satisfied:

- Forest management activities
- Natural areas management activities
- Dam and levee maintenance activities
- Utility maintenance activities
- Road intersection and driveway line-of-sight maintenance activities
- Temporary access to project sites
- Some exemptions are available for agricultural practices and farm drainage ditches without stream history pursuant to s. 30.10 (4)(c)

#### **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 primary shoreland 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 also 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 attachments.

**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 and by exempting utility maintenance activities from shoreland vegetation standards.

**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 zoning 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 zoning 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 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

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 for the revision of the Shoreland Protection Program (Wis Admn Code, ch. NR 115) in the summer of 2007. This summary does not contain each individual comment received. For a copy of the complete comment database please contact Toni Herkert: toni.herkert@wisconsin.gov or (608) 266-0161.

#### 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:** Remove the requirement that the access and viewing corridor is 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.

##### Public Comment

(4) Best management practices:

- Refer to as "technical standards"

**Response:** A note on technical standards was added stating that the list of technical standards is adequate to meet the BMP's.

##### Public Comment

(5) Compliant building location:

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

**Response:** No action. After testing options, the term "deep" was the most readily understood way to describe the location. Add a graphic in a note to the model ordinance for further clarity.

##### Public Comment

(6) Conditional use or special exception

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

**Response:** "Special exception" deleted from definition, although general zoning law uses these terms interchangeably and governs local procedures.

**Public Comment**

(11) 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:** Clarify rule language. Change to “larger in any dimension”.

**Public Comment**

(15) 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 as it is used in NR151. Add requirement that the Department maintain a technical standard based on scientific testing for the imperviousness of surfaces.

**Public Comment**

(18) Lift

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

**Response:** Delete definition. Lifts would be allowed to provide safe pedestrian access to the water in NR 115.13(4).

**Public Comment**

(19) Lot

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

**Response:** Reference to “access” deleted from definition, although ownership of navigable waterway bed does not change the measures needed to protect habitat, water quality. The provision is consistent with the use of OHWM, is ecologically consistent and administratively simple. No action.

**Public Comment**

(23) 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:** No change. 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.

**Public Comment**

(24) Primary shoreland buffer:

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

**Response:** No change made to definition; however, change made to “Shoreland vegetation and buffer” section.

**Public Comment**

(27) 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.

**Public Comment**

(28) 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:** No change other than deletion of “note” that gave examples of structures. Anything meeting the long-standing definition has the potential for impact. Differences in impact are addressed by differences in standards. “Principal structure” is defined and “accessory structure” is addressed above. Houseboats on land are structures. In the water, they are governed by state waterway and boating laws.

**Public Comment**

(32) 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:** Delete and rely on authority given to local units of government by the Wisconsin Legislature to engage the variance process using existing procedures. Minimum shoreland standards do not generally establish uses in the shoreland zone. Uses are specified only for the wetland district; other uses eliminate wetland and so require rezoning.

**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:** Planned development district added. No other changes in this section. 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 and will be addressed elsewhere.

## 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:**

Modify 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, 1984.

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.

## Shoreland-wetland zoning districts

**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 Rule:** 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 terminological 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.

**Response:**

Revert to existing language, removing the reference to a “practicable alternative,” changing proposed s. NR 115.07(5)(d) to read:

(d) In order to ensure that the shoreland protection objectives found in s. 281.31, Stats., will be accomplished by the county shoreland-wetland zoning ordinance, a county may not rezone a shoreland-wetland zoning district, or portion thereof, ~~if there is a practicable alternative or~~ if the proposed rezoning may result in a significant adverse impact upon any of the following:

This proposed change is an attempt to fully align this rule with the state and federal wetland standards. As the change would in some instances potentially require additional analysis at the local level, the change will not be made.

~~Instead of the change above, we will add a note at the end of the section that states: “Note: State and federal permits may be required prior to altering a shoreland wetland.”~~

Language is also edited to reflect the modern process of digitizing shoreland-wetland inventory maps and the associated changes to the county review process for wetland inventory map amendments. Counties will have the opportunity to challenge inaccuracies or discrepancies if a narrative accompanies the notice to the department explaining the problem areas.

## 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 rule.

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:**

Remove factors for review and leave to county discretion.

Continue to review all lot divisions – If there is no review of one to three lots less than five acres substandard lots would continue to be created and sold that may not be able to be developed as desired. Local review process can be streamlined – review at this stage saves time later in that it avoids creating lots that will require variances or specialized measures in order to build on – with resulting harm to fish and wildlife habitat, water quality and natural scenic beauty.

As part of the Department duties, DNR will provide information to landowners and help implement the requirement through its ongoing coordination with surveyors and plat review staff.

## 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 unsewered; 10,000 square feet sewerer

**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

**Response:**

Ten-thousand square foot lots simply cannot accommodate the typical home size along with typical accessory structures and surfaces that commenters say are needed or desired while meeting all the dimensional shoreland zoning requirements. A reduction allowance for sewerer lots has been eliminated

because having a sewer-connection does not remedy the impacts to fish and wildlife habitat and natural scenic beauty. Increased lot size standard of 20,000 square feet for new lots will be retained.

The lot width measurement has been changed to allow the 100-foot width to be an average computed using three width measurements— 1) at the OHWM, 2) at the setback and 3) one other location of the owners' choosing on the lot within 300 feet of the OHWM.

The final draft of NR 115, allows planned unit developments to have increased densities on non riparian lots as long as standards for water quality, habitat and natural scenic beauty are met for the entire development by requiring larger buffers and setbacks for riparian lots. Counties must develop their own minimum lot size and density requirements for multi-family residential structures, mobile home parks and campgrounds as part of their shoreland ordinance.

Combination of substandard lots in common ownership will not be required; however, standards are now included that address how adjacent commonly owned lots smaller than the revised lot size requirements may retain their substandard status.

## Minimum Setbacks

**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). New setback reduction process allows properties with no compliant location due to a unique property feature to reduce setback to allow a 30' building envelope. Reduced setback cannot be smaller than 50'. Impervious surface and mitigation standards automatically apply because building will be closer than 75'. Setback averaging no longer allowed.

### 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 stating not big enough. 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.
- Concern expressed that existing setback averaging process will be compromised or discontinued. And conversely, 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.

**Response:**

No major changes. 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 inconsistent 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.

## **Height Requirements**

**Purpose of section:** To address the wildlife habitat and natural scenic beauty mandate of NR115 this new standard limits the height of new residential development within 300’ of the OHWM and encourages height caps to achieve natural scenic beauty and habitat objectives for commercial, agricultural and industrial uses where those are allowed by general zoning in the shoreland zone.

**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:**

To address issue with church steeple height or other objects attached to the roof, change language to “unless the highest point of the roof pitch does not exceed 35 feet.” How counties measure the 35-foot structure height limit is left to county discretion. In addition, the height limits for ~~planned development districts~~, commercial, agricultural and industrial permitted uses shall be created by counties and written into their ordinances if such uses are allowed in the shoreland zone.

It is likely that urban waterfront development in unincorporated areas will be either commercial or mixed-use. The counties are being given the flexibility to define limits for non-residential districts. Condo development typically occurs in residential districts, thus in the 300’ shoreland zone condos would be limited in height. Not defining a vantage point from which to measure height will allow counties with exiting height limits to maintain their measurement methods.

## **Shoreland Vegetation and Buffers**

**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 from the primary buffer to the structural setback for the same conditions as the primary buffer.

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

**Response:**

Remove automatic requirement to re-establish a primary shoreland buffer when a new principal structure is being constructed, but it will be one option if mitigation is required. However, the buffer rules will still

require the preservation and maintenance of intact buffers on newly created lots. 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.

In this draft, the department proposes to combine the vegetation management section (1)(b) with the removal section (2)(d) and create one section under (1)(b) entitled “vegetation management.” In addition, the section (1)(a) will be combined with the general section in (1) moving the title “vegetation removal criteria” to the beginning of this section.

The 35 foot primary buffer size will be 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.

## **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:**

The Impervious surface section has been reorganized for better ease of interpretation. The section maintains that simply exceeding impervious surface standards does not create an automatic requirement for immediate action; a change to the property must first be proposed.

Unlimited maintenance and repair will still be allowed without mitigation. Mitigation is required for replacement of structures where caps are exceeded.

In the final proposal, expansions to structures that are partially within the secondary buffer are allowed as long as the expansion to the existing structure is wholly beyond the setback. Absolutely no expansions are permitted in the primary buffer.

Negative impacts to aquatic ecosystems are documented at 8% impervious surface coverage. To stay as close to the science as possible, the threshold for both existing and new development will be 10% total impervious cover of the lot within 300 feet of the ordinary high water mark. Any additions to impervious surface cover up to 20% must be accompanied by mitigation. To expand beyond 20%, a relief valve has been added in the form of the “Excess Impervious surface authorization” provision. For properties that meet the minimum setback, this provision enables the 20% cap to be exceeded up to a maximum of 30% as long as specific requirements are met. Variances may still provide minimum relief. Public streets remain included in impervious surface calculations because they contribute to impact; shared surfaces are divided so that they do not unduly restrict a single property.

## 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 intent is now clearly stated to be used “when a person or property owner proposes construction, reconstruction, expansion, replacement, or relocation of a structure or impervious surface” which will exceed specific thresholds. “Expansion” has been redefined to mean to make “larger in any direction”.

The entire section has been reorganized, making it clearer that meeting the performance standards for water quality and fish and wildlife habitat are sufficient to meet the natural scenic beauty performance standard.

Also, the section has been clarified so that counties understand they can simply adopt the requirement of a full primary buffer restoration into their ordinances for a mitigation system because a naturally vegetated functioning primary buffer will meet the goals of the performance standards.

Technical standards have been added referencing the computer program made available by the Department that will help counties conclude whether mitigation measures meet the code-required performance standards. Counties must choose to adopt the computer program, full buffer restorations, or a county-specific mitigation system to implement these performance standards.

Specific mitigation practices are not prescribed because at least 17 counties have mitigation systems in place today and it is the intent of this proposal to allow those systems to remain in place with minor modifications in some cases and no changes in others.

If counties decide to develop their own mitigation system, they have the authority to simplify their system by requiring a single or limited number of mitigation measures. Fewer mitigation options give certainty but limit flexibility. Many available mitigation measures are low or no cost. Property owners can control costs through their choices about whether and how much to exceed dimensional standards and choices among mitigation measures.

In the absence of a mitigation system, the result of unlimited modification of the shoreland zone are 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.

### **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 removed from the code. The goals of the section are met by the Land division review section.

### **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:**

The following changes have been made to provide local flexibility. ~~Timing changed from “regular” to “periodic” required inspections of permitted work in progress.~~ Counties shall now include a plan for ensuring that landowners in unincorporated areas are informed of shoreland zoning requirements, but without specifications for how to coordinate the plan.

A variety of recording methods are allowed to provide additional flexibility for how counties keep records of board of adjustment and planning and zoning committee proceedings. The procedure to be followed for allowing disabled persons to take actions otherwise prohibited allowing equitable access to property has been clarified. The requirement that site diagrams be submitted with permit applications has been removed.

### 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.

**Recommendation:**

No changes based on comments. One provision was added requiring the Department to evaluate the effectiveness of the NR 115 revision—new provisions—in upholding the statutory goals of the program and submit a report to the Natural Resources Board ten (10) years after the effective date of the code. 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.

## 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, but rather in many cases actually 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 showed. 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*).

## **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 proposed rule provides choices among mitigation practices ranging 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 has provided a computer-based mitigation design tool to provide specifications and instructions for mitigation measures for counties that 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.

On a societal level, the revised shoreland zoning provisions may decrease costs in the form of fewer public infrastructure extensions to waterfront properties (since there is no longer an incentive for sewerred lots) and reductions in lake and river restoration costs. Both are costs that are often passed off to property owners via taxes.

## 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 the specific rule 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 cover limits of 8%), the rule follows the scientific direction while, as a matter of equity, recognizing and not seeking to reverse the current amount 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 the specific rule 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 the updating and revision of 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 Toni Herkert at [toni.herkert@wisconsin.gov](mailto:toni.herkert@wisconsin.gov) of (608) 266-0161.

#### ***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 too 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 replaced 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 public's 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

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## EA ATTACHMENT 3

### NR 115 FOCUS GROUP MEMBERSHIP

#### IMPERVIOUS SURFACE FOCUS GROUP

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- 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

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- 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

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- 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.

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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**

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- 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**

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- Mr. Jack Broughton, Bielinski Homes
- Mr. Mike Dresen, University of Stevens Point, Center for Land Use Education (NR 115 Advisory Committee member)
- Mr. Karl Kastrovsky, 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**

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- 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**

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- 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**

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- 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

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##### 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

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- 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

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- 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

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- 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

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- 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

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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
November 2007 – February 2008	Final Redraft of NR 115, Environmental Analysis and Fiscal note completed.

## **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 115 Advisory 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, and impervious surfaces.

#### **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

BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARINGS  
WT-28-04

NOTICE IS HEREBY GIVEN that pursuant to ss. 59.692, 227.11(2)(a) and 281.31, Stats., interpreting ss. 59.69, 59.692, 59.694 and 281.31, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 115, Wis. Adm. Code, relating to minimum standards for county shoreland zoning ordinances. Major provisions of the proposed rule include changes to vegetation management in the primary shoreland buffer and changes to regulation of nonconforming structures. New requirements include minimum lot size and density requirements for multi-unit residential development, mobile home parks and campgrounds; two formulas to calculate reduced shoreland setbacks; an impervious surface standard; and mitigation standards. The proposals include:

Land Division Review – NR 115.09

1. The requirement for land division review is changed from the creation of "3 or more lots" to the creation of "one or more lots" to ensure that all new lots created meet minimum lot size requirements.
2. If new lots are created that are divided by a stream or river, one side of the lot shall have a compliant building location.

Lot Size and Development Density – NR 115.11

1. Minimum lot size and density standards have changed eliminating a distinction between sewered and unsewered areas. The new minimum lot size for all lots created after the effective date of the rule is 20,000 square feet and 100 feet of width at the building setback and ordinary high water mark. Counties may allow development on a substandard lot.
2. Counties are required to develop minimum area or lot size requirements for multi-family residential structures, mobile home parks and campgrounds.
3. Counties may request the approval of standards for alternative forms of development with reduced lot sizes for planned unit developments, cluster developments, conservation subdivisions and other similar alternative forms of development if they include larger shoreland buffers, larger lot sizes or larger setbacks on those lots adjacent to the water.

Shoreland Setback – NR 115.13

1. Language is added to address structures exempted by other state or federal laws from the shoreland setback standards.
2. Provisions are added to allow counties to exempt structures from the shoreland setback if they meet certain requirements outlined in s. NR 115.13(4).
3. The construction of new dry boathouses is still exempted; however, a size limit of 250 square feet has been added to the rule.
4. Standards are established to qualify a lot for a reduced setback if there is not a compliant building location.

Height Requirements – NR 115.15

1. A new section on structure height was added to protect and preserve the natural scenic beauty of lake and riverine environments.

Shoreland Vegetation and Buffers – NR 115.17

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1. Language governing management of shoreland vegetation in the primary shoreland buffer is improved, resulting in a more functional buffer protecting habitat and water quality.

2. Tree and shrubbery pruning is allowed. Removal of trees and shrubs may be allowed if they are exotic or invasive species, diseased or damaged, or if an imminent safety hazard, but removed trees and shrubbery must be replaced.

3. Provisions are added to allow counties to exempt 7 types of activities from the shoreland vegetation provisions.

4. A formula for the width of access corridors is provided, replacing the "30 feet in any 100 feet" provision, which was confusing if a lot had less than 100 feet of frontage. A second formula for lots with greater than 200 feet of frontage was also added to address larger developments adjacent to the water.

#### Impervious Surfaces – NR 115.19

1. Development is regulated through the use of percentages of total impervious surface rather than through the use of a nonconforming structure provision. The impervious surface percentages of 10% for new principal structures or 15% for existing development may be exceeded up to a maximum of 20% total impervious surface within 300 feet of the ordinary high water mark if mitigation measures are implemented and maintained.

2. Provisions are also included for shared impervious surfaces, expansion, enclosing existing impervious surfaces, replacements and relocation.

#### Mitigation Provisions – NR 115.21

1. Provisions are now a performance measure to protect, preserve and enhance water quality and wildlife habitat while achieving natural scenic beauty.

2. There is a water quality standard and a wildlife standard that the counties will have to flesh out in their individual ordinances. The water quality standard will require infiltration of runoff.

3. A provision on proportionality has been added to ensure the mitigation measures required will not outweigh the impacts of the proposed project.

#### Land Disturbing Construction Activities – NR 115.23

1. A county permit is required for land disturbing construction activities in the shoreland zone to minimize erosion and sedimentation.

2. Counties shall exempt from the permit requirement activities that have already received permits from other identified permitting authorities.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the Department will hold an open house from 4:30 p.m. to 5:30 p.m. prior to each hearing. Department staff will be available to answer questions regarding the proposed rules.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

July 24, 2007 Auditorium, Health & Science Bldg., North Central Tech College, 1000 W. Campus Dr.,  
Tuesday Wausau at 5:45 p.m.

- July 25, 2007 Auditorium, Rhinelander High School, 665 Coolidge Avenue, Rhinelander  
Wednesday at 5:45 p.m.
- July 26, 2007 Blue Hills Masonic Center, 225 West South Street, Rice Lake  
Thursday at 5:45 p.m.
- July 31, 2007 Community Room, Farmers & Merchants Bank, 1001 Superior Avenue, Tomah  
Tuesday at 5:45 p.m.
- August 1, 2007 Neville Museum Theater, 210 Museum Place, Green Bay  
Wednesday at 5:45 p.m.
- August 7, 2007 Lower Level, Pewaukee City Hall, W240 N3065 Pewaukee Road, Pewaukee  
Tuesday at 5:45 p.m.
- August 8, 2007 Opera House, 381 E. Main Street, Stoughton  
Wednesday at 5:45 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Toni Herkert at (608) 266-0161 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at either of the following Internet sites: <http://dnr.wi.gov/org/water/wm/dsfm/shore/news.htm> or <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Toni Herkert, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until September 7, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Herkert.

Dated at Madison, Wisconsin

June 12, 2007

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By

Scott Hassett

Scott Hassett, Secretary

BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARINGS  
WM-19-07

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.014, 29.041, 29.197, 29.885 and 227.11(2)(a), Stats., interpreting ss. 29.014, 29.041 and 29.885, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 10, Wis. Adm. Code, relating to the 2007 migratory game bird seasons. Season dates and bag limits will be set for ducks and Canada geese. The daily bag limit is expected to be 6 ducks, including no more than 4 mallards, of which only one may be a hen, one black duck, one pintail, 2 wood ducks, 2 redheads and 3 scaup. The season lengths for Canada geese are expected to be: Collins Zone – 62 days; Horicon Zone – 62 days; Exterior Zone – 85 days; and Mississippi River Subzone – 70 days.

The Department is also proposing to:

- Require the use of non-toxic shot for rail, snipe and moorhen statewide.
- Require the use of non-toxic shot for mourning doves on department-managed lands only beginning in 2008.
- Allow the placement of decoys and shooting at birds that are within a 75-yard area around the boundary of the Horizon National Wildlife Refuge as long as the hunter is more than 75 yards from the boundary.
- Relax Canada goose nuisance control requirements for airports.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., is it not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at [SmallBusiness@dnr.state.wi.us](mailto:SmallBusiness@dnr.state.wi.us) or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

August 6, 2007 Rooms B-19 and B-20, State Office Bldg., 3550 Mormon Coulee Road, La Crosse  
Monday at 7:00 p.m.

August 7, 2007 Room R228, Meggers Hall, UW-Barron County, 1800 College Drive, Rice Lake  
Tuesday at 7:00 p.m.

August 8, 2007 Main Conference Room, Agricultural Services Center, 3369 W. Brewster St., Appleton  
Wednesday at 7:00 p.m.

August 9, 2007 Main Conference Room, State Office Bldg., 141 N.W. Barstow Street, Waukesha  
Thursday at 7:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Ms. Kim Benton at (608)

261-6458 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Ms. Kim Benton, Bureau of Wildlife Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 9, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Benton.

Dated at Madison, Wisconsin

June 12, 2007

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By

Scott Hassett

Scott Hassett, Secretary

BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING  
LE-07-07

NOTICE IS HEREBY GIVEN that pursuant to ss. 29.03 and 29.972, Stats., interpreting ss. 29.03 and 29.972, Stats., the Department of Natural Resources will hold a public hearing on the creation of NR 8, subch. II, Wis. Adm. Code, relating to implementation of the Wildlife Violators Compact. 2005 Wisconsin Act 282 authorized the Department to enter into a Wildlife Violator Compact with other states. Under the compact, convictions of wildlife law and revocation of license privileges and approvals that authorize the pursuing, taking or possession of wildlife that occur in any member state are treated as if they occurred in all member states. Before the Department can formally become a member state, rules need to be promulgated which establish procedures to:

1. Assure all violators receive notification when their license privileges and approvals have been revoked by this state or any other member state.
2. Assure the exchange of information between the department, the district attorney and the clerk of courts.
3. Provide an administrative appeal process by which the department can establish if sufficient grounds exist to deny a person's application for an approval or the revocation of their existing approvals.

The proposed rules require the department to revoke all issued hunting, fishing or trapping license privileges and approvals or deny new applications for approvals, for any person who fails to respond to a summons or warrant, fails to appear on their court date without having made a deposit, or fails to appear before the court and is subject to a bench warrant. These rules are also required to ensure that due process is accorded to individuals subject to revocation in this state or who are revoked in another member state. These rules are also necessary to assure records and information on revocations is shared with the clerks of court in the counties where the violation occurs.

Once the new rules and procedures are in place, the department will apply to become a member state.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at [SmallBusiness@dnr.state.wi.us](mailto:SmallBusiness@dnr.state.wi.us) or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

July 26, 2007 Room 405, GEF #2, 101 South Webster Street, Madison  
Thursday at 2:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Thomas Van Haren at

(608) 266-3244 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Thomas Van Haren, Bureau of Law Enforcement, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until July 27, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Van Haren.

Dated at Madison, Wisconsin June 12, 2007

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By Scott Hassett  
Scott Hassett, Secretary

BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING  
FH-28-07(E)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 23.09(2)(intro.), 23.091, 23.11(1), 23.22(2)(a) and (b)6., 27.01(2)(j), 29.041, 227.11(2)(a) and 227.24(1)(a), Stats., interpreting ss. 23.09(2)(intro.), 23.22(2)(a), 29.014(1), 29.041 and 227.11(2)(a), Stats., the Department of Natural Resources will hold public hearings on Natural Resources Board Emergency Order No. FH-28-07(E) which revises chs. NR 19 and 20, Wis. Adm. Code, pertaining to control of fish diseases and invasive species. This emergency order was published on May 27, 2007 and revised Natural Resources Board Emergency Order FH-22-07(E) which took effect on April 7, 2007 and Natural Resources Board Emergency Order No. FH-25-07(E). This rule will aid the Department in controlling the spread of viral hemorrhagic septicemia virus (VHS) in the following ways: Natural Resources Board Emergency Order FH-28-07(E) extends the restrictions on the movement and use of fish, fish parts and water taken from the Great Lakes and Mississippi River drainages to the Lake Winnebago system and the Fox River from Lake Winnebago to Green Bay and allows extensions to other waters in the event that the VHS virus is discovered in those waters.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

July 11, 2007 Room 413, GEF #2, 101 South Webster Street, Madison  
Wednesday at 10:00 a.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Bill Horns at (608) 266-8782 with specific information on your request at least 10 days before the date of the scheduled hearing.

The emergency rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Bill Horns, Bureau of Fisheries Management and Habitat Protection, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until July 13, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearing. A personal copy of the emergency rule and fiscal estimate may be obtained from Mr. Horns.

Dated at Madison, Wisconsin

June 12, 2007

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By

Scott Hassett

Scott Hassett, Secretary

BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARING  
WT-26-07(E)

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 30.12(1) and (3)(br), 30.2035, 30.206, 227.11(2)(a) and 227.24, Stats., interpreting ss. 30.12(1), (3) and (3m) and 30.206, Stats., the Department of Natural Resources will hold a public hearing on Natural Resources Board Emergency Order No. WT-26-07(E) pertaining to general permits for dredging in Great Lakes navigable waterways. The emergency rule revises ch. NR 345, Wis. Adm. Code, to establish a new general permit with appropriate conditions. The rule establishes standards for projects to be eligible for a general permit for dredging, including operation of a motor vehicle, on the beds of the Great lakes to remove algae, mussels, dead fish and similar large plant and animal nuisance deposits.

The emergency rule establishes a general permit for an activity that would otherwise require an individual permit. The general permit will permit lakefront property owners to remove plant and animal nuisance deposits on the beds of outlying waters more efficiently while complying with general permit conditions created to protect the public interest in the lakebed. The general permit has a \$50 application fee and is processed within 30 days.

NOTICE IS HEREBY FURTHER GIVEN that the hearing will be held on:

July 10, 2007 Lake Michigan Room, Green Bay Service Center, 2984 Shawano Ave., Green Bay  
Tuesday at 3:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Roberta Lund at (608) 266-2220 with specific information on your request at least 10 days before the date of the scheduled hearing.

The emergency rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Written comments on the proposed rule may be submitted via U.S. mail to Mr. Martye Griffin, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until July 20, 2007. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the emergency rule may be obtained from Ms. Lund.

Dated at Madison, Wisconsin

June 12, 2007

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By

Scott Hassett

Scott Hassett, Secretary

BEFORE THE  
DEPARTMENT OF NATURAL RESOURCES

NOTICE OF PUBLIC HEARINGS  
WT-28-04

NOTICE IS HEREBY GIVEN that pursuant to ss. 59.692, 227.11(2)(a) and 281.31, Stats., interpreting ss. 59.69, 59.692 and 281.31, Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 115, Wis. Adm. Code, relating to minimum standards for county shoreland zoning ordinances. The proposed revisions are intended to meet the statutory objectives of the program, while providing certainty and flexibility to counties and property owners. Changes include adding definitions to the rule for clarity; establishing standards for multi-unit residential development, mobile home parks and campgrounds; providing exemptions for certain activities from shoreland setback and shoreland vegetation standards; establishing impervious surface standards; and replacing the "50% rule" for nonconforming structures with a standard based 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. Substantive changes include:

- Language is added to advance the statutory purposes of the program found in s. 281.31(1), Stats.
- Language is added recognizing that this rule only establishes minimum standards for county shoreland zoning ordinances, and counties may adopt more protective regulations to adequately protect local resources.
- Language consistent with s. 59.692(7), Stats., is added to clarify how this rule impacts lands annexed or incorporated by cities and villages.
- Language clarifying the authority of the town shoreland zoning ordinances is added.
- Language clarifying the applicability of ch. NR 115 in areas under the jurisdiction of ch. NR 118 is added.
- The number of definitions was increased from 13 to 52 to help provide consistency in interpretation of county shoreland zoning ordinances
- The requirement for land division review is changed from the creation of "3 or more lots" to the creation of "one or more lots" to ensure that all new lots created meet minimum lot size requirements. This standard was added to protect prospective property owners and ensure that all lots have a buildable area.
- If new lots are created that are divided by a stream or river, one side of the lot must meet minimum lot size requirements and density standards. No portion of a lot or parcel divided by a navigable stream may be developed unless that portion of the lot or parcel meets or is combined to meet the minimum lot size requirements and density standards. This provision will ensure that development only takes place on lots or parcels which meet minimum lot size requirements, again safeguarding property owners.
- Counties may adopt standards to regulate substandard lots in common ownership.
- Minimum lot size and density standards are established for multi-unit residential development, mobile home parks, campgrounds and other types of uses.
- Counties may request the approval of an alternative regulation for campgrounds that is different than the minimum standards in ch. NR 115. Counties utilizing this option must demonstrate how the alternative regulation would achieve the statutory purposes of the program.
- Counties are granted the flexibility to regulate keyhole lots.
- New lot width measurement is developed which will accommodate irregular shaped lots.
- Counties are granted the flexibility to regulate backlots in the shoreland zone.
- Outlots may be created as part of a subdivision plat or certified survey map.
- Counties may request the approval of standards for alternative forms of development with reduced lot sizes and development densities for planned unit developments, cluster developments, conservation subdivisions, and other similar alternative forms of development if

they include, at a minimum, a required shoreland setback of more than 75 feet and a larger primary buffer than is required in s. NR 115.15(2).

- Language is added to address structures exempted by other state or federal laws from the shoreland setback standards.
- Provisions are added to allow counties to exempt 15 types of structures from the shoreland setback, an increase from 3 exempted structures.
- The construction of new dry boathouses is prohibited.
- Standards are established to qualify a lot for a reduced setback and two methods of calculating the reduced setback are provided. Counties may also request approval of an alternative setback reduction formulate, demonstrating how the alternative is as effective in achieving the purposes of s. 281.31(1) and (6), Stats.
- Language governing management of shoreland vegetation in the primary shoreland buffer is improved, resulting in a more functional buffer protection habitat and water quality.
- Tree and shrubbery pruning is allowed. Removal of trees and shrubs may be allowed if exotic or invasive species, diseased or damaged, or if an imminent safety hazard, but must be replaced.
- Provisions are added to allow counties to exempt 7 types of activities from the shoreland vegetation provisions.
- A formula to calculate the vegetative buffer mitigation requirements for existing multiple-unit developments was added to proportionately mitigate based on the intensity of the project.
- A formula for the width of access corridors is provided, replacing the "30 feet in any 100 feet" provision, which was confusing if a lot had less than 100 feet of frontage.
- Existing lawns may be maintained indefinitely in the primary shoreland buffer, unless a property owner decides to initiate one of 5 actions that require restoration of the primary shoreland buffer.
- Best management practices must be implemented and maintained that, to the maximum extent practicable, result in no increase in storm water discharge from impervious surfaces.
- If a project results in a lot being covered with 20% or more impervious surfaces, the shoreland buffers must be preserved or restored in compliance with the standards in s. NR 115.15 (applies only to lots with lands within 75 feet of the ordinary high water mark).
- An erosion control and revegetation plan is required for land disturbing activities to minimize erosion and sedimentation caused by the activity.
- A county permit is required for land disturbing activities in the shoreland zone if the project includes 2,000 square feet or more of land.
- Counties shall exempt from the permit requirement activities that have already received permits from other identified permitting authorities.
- Counties may require a wetland buffer to minimize the impacts of land disturbing activities to prevent damage to wetlands.
- The "50% rule" is removed, and a standard for the regulation of nonconforming structures based on the location and size of structures is used.
- Unlimited ordinary maintenance and repairs is allowed on nonconforming structures.
- Structural alternations are allowed on nonconforming structures if mitigation is implemented as specified by the county.
- Expansion and replacement of nonconforming accessory structures is prohibited, unless located in a campground or mobile home park, and certain standards are satisfied.
- Expansions of nonconforming principal structures is allowed is the structure is set back at least 35 feet from the ordinary high water mark, if the footprint cap is not exceeded, if mitigation is implemented as specified by the county and if other standards are met.
- Replacement of nonconforming principal structures is allowed on the existing foundation anywhere within the shoreland setback area, and on new foundations if the structure is setback at least 35 feet from the ordinary high water mark, if mitigation is implemented as specified by the county, and if other standards are met.
- Replacement of nonconforming principal structures is prohibited if the structure has no foundation, the foundation extends below the ordinary high water mark or the structure extends over the ordinary high water mark.

- Counties shall adopt a mitigation system that is roughly proportional to the impacts of activities proposed.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at [SmallBusinessReg.Coordinator@dnr.state.wi.us](mailto:SmallBusinessReg.Coordinator@dnr.state.wi.us) or by calling (608) 266-1959.

NOTICE IS HEREBY FURTHER GIVEN that the Department has prepared an Environmental Assessment in accordance is s. 1.11, Stats., and ch. NR 150, Wis. Adm. Code, that has concluded that the proposed rule is not a major state action which would significantly affect the quality of the human environment and that an environmental impact statement is not required.

NOTICE IS HEREBY FURTHER GIVEN that the Department will hold question and answer session from 4:30 p.m. until 5:45 p.m. prior to each hearing. Department staff will be available to answer questions regarding the proposed rules.

NOTICE IS HEREBY FURTHER GIVEN that the hearings will be held on:

July 12, 2005 Chippewa Valley Technical College, 620 Clairemont Avenue, Eau Claire  
Tuesday at 6:00 p.m.

July 13, 2005 Wis. Indianhead Technical College, 2100 Beaser Avenue, Ashland  
Wednesday at 6:00 p.m.

July 14, 2005 Egg Harbor Room, Landmark Resort, 7643 Hillside Road, Egg Harbor  
Thursday at 6:00 p.m.

July 19, 2005 Western WI Technical College, 304 6<sup>th</sup> Street North, La Crosse  
Tuesday at 6:00 p.m.

July 21, 2005 Sentry World Theater, 1800 North Point Drive, Stevens Point  
Thursday at 6:00 p.m.

July 26, 2005 UW Washington County, 400 University Drive, West Bend  
Tuesday at 6:00 p.m.

July 27, 2005 Grand Chute Town Hall, 1900 Grand Chute Boulevard, Grand Chute  
Wednesday at 6:00 p.m.

July 28, 2005 Nicolet Technical College, County Highway G, Rhinelander  
Thursday at 6:00 p.m.

August 2, 2005 Lake Lawn Resort, 2400 East Geneva Street, Delavan  
Tuesday at 6:00 p.m.

August 4, 2005 Oak Hall Room, Fitchburg Community Center, 5520 Lacy Road, Fitchburg  
Thursday at 6:00 p.m.

NOTICE IS HEREBY FURTHER GIVEN that pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Toni Herkert at (608) 266-0161 with specific information on your request at least 10 days before the date of the scheduled hearing.

The proposed rule and fiscal estimate may be reviewed and comments electronically submitted at the following Internet site: [adminrules.wisconsin.gov](http://adminrules.wisconsin.gov). Written comments on the proposed rule may be submitted via U.S. mail to Toni Herkert, Bureau of Watershed Management, P.O. Box 7921, Madison, WI 53707. Comments may be submitted until August 12, 2005. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Ms. Herkert.

Dated at Madison, Wisconsin

June 15, 2005

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By

Scott Hassett

Scott Hassett, Secretary