

Chapter NR 115

WISCONSIN'S SHORELAND PROTECTION PROGRAM

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**Note:** Chapter NR 115 as it existed on July 31, 1980, was repealed and a new chapter NR 115 was created effective August 1, 1980.

**NR 115.01 Purpose.** Section 281.31, Stats., provides that shoreland subdivision and zoning regulations shall: “further the maintenance of safe and healthful conditions; prevent and control water pollution; protect spawning grounds, fish and aquatic life; control building sites, placement of structure and land uses and reserve shore cover and natural beauty.” Section 59.692, Stats., requires counties to effect the purposes of s. 281.31, Stats., and to promote the public health, safety and general welfare by adopting zoning regulations for the protection of all shorelands in unincorporated areas that meet shoreland zoning standards promulgated by the department. The purpose of this chapter is to establish minimum shoreland zoning standards for ordinances enacted under s. 59.692, Stats., for the purposes specified in s. 281.31 (1), Stats., and to limit the direct and cumulative impacts of shoreland development on water quality; near-shore aquatic, wetland and upland wildlife habitat; and natural scenic beauty. Nothing in this rule shall be construed to limit the authority of a county to enact more restrictive shoreland zoning standards under s. 59.69 or 59.692, Stats., to effect the purposes of s. 281.31, Stats.

**History:** Cr. Register, July, 1980, No. 295, eff. 8-1-80; reprinted to correct error, Register, December, 1980; corrections made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; **CR 05-058: r. and recr. Register January 2010 No. 649, eff. 2-1-10.**

**NR 115.02 Applicability.** The provisions of this chapter apply to county regulation of the use and development of unincorporated shoreland areas, and to annexed or incorporated areas except as provided in s. 59.692 (7), Stats. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Stats., applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances. The construction, reconstruction, maintenance or repair of state highways and bridges carried out under the direction and supervision of the Wisconsin department of transportation is not subject to local shoreland zoning ordinances if s. 30.2022 (1), Stats., applies.

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

**History:** Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. Register, October, 1980, No. 298, eff. 11-1-80; **CR 05-058: am. Register January 2010 No. 649, eff. 2-1-10; correction made under s. 13.92 (4) (b) 7., Stats., Register January 2010 No. 649.**

**NR 115.03 Definitions.** For the purpose of this chapter:

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

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

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

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

**(3)** “Department” means the department of natural resources.

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

**(4)** “Flood plain” means the land which has been or may be hereafter covered by flood water during the regional flood. The flood plain includes the floodway and the flood fringe as those terms are defined in ch. NR 116.

**(4g)** “Impervious surface” means an area that releases as run-off all or a majority of the precipitation that falls on it. “Impervious surface” excludes frozen soil but includes rooftops, sidewalks, driveways, parking lots, and streets unless specifically designed, constructed, and maintained to be pervious.

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

**(5)** “Navigable waters” means Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state. Under s. 281.31 (2) (d), Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.692, Stats., and this chapter do not apply to lands adjacent to farm drainage ditches if:

(a) Such lands are not adjacent to a natural navigable stream or river;

(b) Those parts of such drainage ditches adjacent to such lands were nonnavigable streams before ditching or had no previous stream history; and

(c) Such lands are maintained in nonstructural agricultural use.

**Note:** In *Muench v. Public Service Commission*, 261 Wis. 492 (1952), the Wisconsin Supreme Court held that a stream is navigable in fact if it is capable of floating any boat, skiff, or canoe, of the shallowest draft used for recreational purposes. In *DeGayner and Co., v. Department of Natural Resources*, 70 Wis. 2d 936 (1975), the court also held that a stream need not be navigable in its normal or natural condition to be navigable in fact. The DeGayner opinion indicates that it is proper to consider artificial conditions, such as beaver dams, where such conditions have existed long enough to make a stream useful as a highway for recreation or commerce, and to consider ordinarily recurring seasonal fluctuations, such as spring floods, in determining the navigability of a stream.

**(6)** “Ordinary high-water mark” means the point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevention of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. Where the bank or shore at any particular place is of such character that it is difficult or impossible to ascertain where the point of ordinary high-water mark is, recourse may be had to the opposite bank of a stream or to other places on the shore of a lake or flowage to determine whether a given stage of water is above or below the ordinary high-water mark.

**(7)** “Regional flood” means a flood determined to be representative of large floods known to have generally occurred in Wisconsin and which may be expected to occur on a particular stream because of like physical characteristics once in every 100 years.

**Note:** The regional flood is based upon a statistical analysis of streamflow records available for watershed and/or an analysis of rainfall and runoff characteristics in the

general watershed region. The flood frequency of the regional flood is once in every 100 years. In any given year, there is a 1% chance that the regional flood may occur. During a typical 30-year mortgage period, the regional flood has a 26% chance of occurring.

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

**(8)** "Shorelands" means lands within the following distances from the ordinary high-water mark of navigable waters: 1,000 feet from a lake, pond or flowage; and 300 feet from a river or stream or to the landward side of the flood plain, whichever distance is greater.

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

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

**(11)** "Unnecessary hardship" means that circumstance where special conditions affecting a particular property, which were not self-created, have made strict conformity with restrictions governing area, setbacks, frontage, height or density unnecessarily burdensome or unreasonable in light of the purposes of the zoning ordinance.

**(13)** "Wetlands" means those areas where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation, and which have soils indicative of wet conditions.

**History:** Cr. Register, July, 1980, No. 295, eff. 8-1-80; renum. (2) to (12) to be (3) to (13), cr. (2), r. and recr. (7), am. (11) and (13), Register, October, 1980, No. 298, eff. 11-1-80; corrections in (2) (a) 1. and (b) 2. made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; **CR 05-058: am. (intro.), renum. (1) to be (1h), cr. (1d), (1p), (3m), (4g), (4r) and (7m), r. (12) Register January 2010 No. 649, eff. 2-1-10.**

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

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

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

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

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

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

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

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

**Note:** Where an apparent discrepancy exists between a shoreland-wetland district shown on an amended map and actual field conditions, the county shall contact the department to determine if the amended map is in error. If the department determines that a particular area was incorrectly mapped as wetland or meets the wetland definition but was not shown as wetland on the map, the county shall have the authority to immediately grant or deny a shoreland zoning permit in accordance with the applicable regulations based on the department determination as to whether the area is wetland. In order to correct wetland mapping errors on the official zoning map, an official map amendment must be initiated within a reasonable period of time, not to exceed one year following the determination.

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

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

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

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

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

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

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

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

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

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

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

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

9. If the department has notified the county zoning agency that a proposed amendment may have a significant adverse impact upon any of the criteria listed in subd. 4., that proposed amendment, if approved by the county board, shall not become effective until more than 30 days have elapsed since written notice of the county board's approval was mailed to the department, as required by subd. 7. If within the 30-day period the department notifies the county board that the department intends to adopt a superseding shoreland zoning ordinance for the county under s. 59.692 (6), Stats., the proposed amendment shall not become effective while the ordinance adoption procedure is proceeding, but shall have its effect stayed until the s. 59.692 (6), Stats., procedure is completed or otherwise terminated.

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

(a) Hiking, fishing, trapping, hunting, swimming and boating.

(b) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops and that does not involve filling, flooding, draining, dredging, ditching, tiling or excavating.

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

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

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

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

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

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

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

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

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

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

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

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

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

**History:** CR 05-058: cr. Register January 2010 No. 649, eff. 2-1-10.

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

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

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

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

3. 'Substandard lots.' A legally created lot or parcel that met minimum area and minimum average width requirements when created, but does not meet current lot size requirements, may be used as a building site if all of the following apply:

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

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

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

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

(b) *Building setbacks.* Permitted building setbacks shall be established to conform to health, safety and welfare requirements, preserve natural beauty, reduce flood hazards and avoid water pollution.

1. 'Shoreland setback.' Except where exempt under subd. 1m., a setback of 75 feet from the ordinary high-water mark of any navigable waters to the nearest part of a building or structure shall be required for all buildings and structures. Where an existing development pattern exists, the shoreland setback for a proposed principal structure may be reduced to the average shoreland setback of the principal structure on each adjacent lot, but the shoreland setback may not be reduced to less than 35 feet from the ordinary high-water mark of any navigable waters.

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

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

a. Boathouses located entirely above the ordinary high-water mark and entirely within the access and viewing corridor that do not contain plumbing and are not used for human habitation.

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

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

c. Fishing rafts that are authorized on the Wolf river and Mississippi river under s. 30.126, Stats.

d. Broadcast signal receivers, including satellite dishes or antennas that are one meter or less in diameter and satellite earth station antennas that are 2 meters or less in diameter.

e. Utility transmission and distribution lines, poles, towers, water towers, pumping stations, well pumphouse covers, private on-site wastewater treatment systems that comply with ch. Comm 83, and other utility structures that have no feasible alternative location outside of the minimum setback and that employ best management practices to infiltrate or otherwise control storm water runoff from the structure.

f. Walkways, stairways or rail systems that are necessary to provide pedestrian access to the shoreline and are a maximum of 60-inches in width.

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

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

(c) *Vegetation.* To protect natural scenic beauty, fish and wildlife habitat, and water quality, a county shall regulate removal of vegetation in shoreland areas, consistent with the following:

1. The county shall establish ordinance standards that consider sound forestry and soil conservation practices and the effect of vegetation removal on water quality, including soil erosion, and the flow of effluents, sediments and nutrients.

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

2. To protect water quality, fish and wildlife habitat and natural scenic beauty, and to promote preservation and restoration of native vegetation, the county ordinance shall designate land that extends from the ordinary high water mark to a minimum of 35 feet inland as a vegetative buffer zone and prohibit removal of vegetation in the vegetative buffer zone except as follows:

a. The county may allow routine maintenance of vegetation.

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

c. The county may allow removal of trees and shrubs in the vegetative buffer zone on a parcel with 10 or more acres of forested land consistent with "generally accepted forestry management practices" as defined in s. NR 1.25 (2) (b), and described in Department publication "Wisconsin Forest Management Guidelines" (publication FR-226), provided that vegetation removal be consistent with these practices.

d. The county may allow removal of vegetation within the vegetative buffer zone to manage exotic or invasive species, damaged vegetation, vegetation that must be removed to control disease, or vegetation creating an imminent safety hazard, provided that any vegetation removed under the permit be replaced by replanting in the same area as soon as practicable.

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

e. The county may authorize by permit additional vegetation management activities in the vegetative buffer zone. The permit issued under this subd. par. shall require that all management activities comply with detailed plans approved by the county and designed to control erosion by limiting sedimentation into the waterbody, to improve the plant community by replanting in the same area, and to maintain and monitor the newly restored area. The permit also shall require an enforceable restriction to preserve the newly restored area.

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

(e) *Impervious surfaces.* Counties shall establish impervious surface standards to protect water quality and fish and wildlife habitat and protect against pollution of navigable waters. County

impervious surface standards shall apply to the construction, reconstruction, expansion, replacement or relocation of any impervious surface within 300 feet of the ordinary high-water mark of any navigable waterway, and shall require all of the following:

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

2. 'Impervious surface standard.' A county may allow up to 15% impervious surface on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark.

3. 'Maximum impervious surface.' A county may allow more than 15% impervious surface but not more than 30% impervious surface on the portion of a lot or parcel that is within 300 feet of the ordinary high-water mark, provided that the county issues a permit that requires a mitigation plan approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines adequate to offset the impacts of the impervious surface on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the impervious surface being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the County Register of Deeds.

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

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

- a. maintenance and repair of all impervious surfaces;
- b. replacement of existing impervious surfaces with similar surfaces within the existing building envelope;
- c. relocation or modification of existing impervious surfaces with similar or different impervious surfaces, provided that the relocation or modification does not result in an increase in the percentage of impervious surface that existed on the effective date of the county shoreland ordinance, and meets the applicable setback requirements in s. NR 115.05 (1) (b).

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

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

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

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

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

3. 'Discontinued nonconforming use.' If a nonconforming use is discontinued for a period of 12 months, any future use of the building, structure or property shall conform to the ordinance.

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

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

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

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

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

d. The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines adequate to offset the impacts of the permitted expansion on water quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the expansion being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the County Register of Deeds.

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

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

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

5m. 'Expansion of nonconforming principal structure beyond setback'. An existing principal structure that was lawfully placed when constructed but that does not comply with the required building setback under par. (b) 1., may be expanded horizontally, landward or vertically provided that the expanded area meets the building setback requirements in par. (b) 1., and that all other provisions of the shoreland ordinance are met. A mitigation plan is not required solely for expansion under this paragraph, but may be required under par. (e) 3.

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

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

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

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

d. The county determines that no other location is available on the property to build a principal structure of a comparable size to the structure proposed for replacement or relocation that will result in compliance with the shoreland setback requirement in par. (b) 1.

e. The county shall issue a permit that requires a mitigation plan that shall be approved by the county and implemented by the property owner by the date specified in the permit. The mitigation plan shall include enforceable obligations of the property owner to establish or maintain measures that the county determines are adequate to offset the impacts of the permitted expansion on water

quality, near-shore aquatic habitat, upland wildlife habitat and natural scenic beauty. The mitigation measures shall be proportional to the amount and impacts of the replaced or relocated structure being permitted. The obligations of the property owner under the mitigation plan shall be evidenced by an instrument recorded in the office of the County Register of Deeds.

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

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

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

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

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

(2) ESTABLISHMENT OF LAND DIVISION REVIEW. Each county shall review, pursuant to s. 236.45, Stats., all land divisions in shoreland areas which create 3 or more parcels or building sites of 5 acres each or less within a 5-year period. In such review all of the following factors shall be considered:

- (a) Hazards to the health, safety or welfare of future residents.
- (b) Proper relationship to adjoining areas.
- (c) Public access to navigable waters, as required by law.
- (d) Adequate storm drainage facilities.
- (e) Conformity to state law and administrative code provisions.

(3) ESTABLISHMENT OF SANITARY REGULATIONS. Each county shall adopt sanitary regulations for the protection of health and the preservation and enhancement of water quality.

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

(b) Where a public sewage collection and treatment system is not available, design and construction of private sewage disposal systems shall, prior to July 1, 1980, be required to comply with ch. Comm 83, and after June 30, 1980, be governed by a private sewage system ordinance adopted by the county under s. 59.70 (5), Stats.

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

- (a) The appointment of an administrator and such additional staff as the workload may require.
- (b) The creation of a zoning agency, as authorized by s. 59.69, Stats., a board of adjustment, as authorized by s. 59.694, Stats., and a county planning agency, as defined in s. 236.02 (1), Stats., and required by s. 59.692 (3), Stats.

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

(d) Regular inspection of permitted work in progress to insure conformity of the finished structures with the terms of the ordinance.

(e) A variance procedure which authorizes the board of adjustment to grant such variance from the terms of the ordinance as will not be contrary to the public interest where, owing to special conditions and the adoption of the shoreland zoning ordinance, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, as long as the granting of a variance does not have the effect of granting or increasing any use of property which is prohibited in that zoning district by the shoreland zoning ordinance.

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

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

(h) Written notice to the appropriate regional office of the department at least 10 days prior to any hearing on a proposed variance, special exception or conditional use permit, appeal for a map or text interpretation, map or text amendment, and copies of all proposed land divisions submitted to the county for review under sub. (2). Upon request of the Department a county shall provide to the appropriate regional office a copy of any permit issued under sub. (1) (g).

(hm) Submission to the appropriate regional office of the department, within 10 days after grant or denial, of copies of any permit granted under sub. (1) (g), any decision on a variance, special exception or conditional use permit, or appeal for a map or text interpretation, and any decision to amend a map or text of an ordinance.

(i) Mapped zoning districts and the recording, on an official copy of such map, of all district boundary amendments.

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

(k) The prosecution of violations of the shoreland ordinance.

**History:** Cr. Register, July, 1980, No. 295, eff. 8-1-80; r. and recr. (2) (a) 3., am. (2) (a) 6., (2) (c) 3., 5., 7., 9., 10., (3) (d), (3) (e) 1. and cr. (2) (c) 11. and 12., Register, October, 1980, No. 298, eff. 11-1-80; correction in (5) (a) and (b) made under s. 13.93 (2m) (b) 7., Stats., Register, September, 1995, No. 477; corrections in (2) (a) 1., (b) 2., (d), (e) 1. to 4. (intro.), 8. and 9., (3) (e) 1., (5) (b), (6) (b) and (j) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; **CR 05-058: am. (title), r. (1) and (2), renum. (3) to (6) to be (1) to (4) and am. (1), (2) (intro.), (4) (intro.) and (h), cr. (4) (hm) Register January 2010 No. 649, eff. 2-1-10.**

**NR 115.06 Department duties.** (1) ASSISTANCE TO COUNTIES. To the full extent of its available resources, the department shall provide advice and assistance to counties in the development, adoption, administration and enforcement of their shoreland zoning and land division ordinances, seeking the highest practicable degree of uniformity consistent with the shoreland protection objectives found in s. 281.31, Stats. As a part of this effort, the department shall prepare a model shoreland zoning ordinance which counties may use in meeting the requirements of s. 59.692, Stats., and this chapter.

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

(a) *Initial ordinance.* The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with s. 59.692, Stats., and this chapter.

(b) *Amendments to ordinance.* The department and each county shall assure that the county shoreland ordinance continues to comply with this chapter by doing the following:

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

a. A county shall amend its shoreland and subdivision ordinances to meet the minimum standards in this chapter within two years after February 1, 2010.

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

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

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

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

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

1. Draft and enact shoreland and subdivision ordinances or required amendments within a time period specified by the department.

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

3. Cooperate with department staff to draft shoreland and subdivision ordinances or required amendments to be enacted by the county within a time period specified by the department not to exceed 180 days.

(b) *Failure to meet minimum standards in initial ordinance or amendments.* Counties which have shoreland zoning and subdivi-

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

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

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

**(4) MONITORING.** It is the responsibility of the department, to aid in the fulfillment of the state's role as trustee of its navigable waters, to monitor the administration and enforcement of shoreland zoning and land division ordinances. In so doing, the department:

(a) Shall review decisions granting special exceptions (conditional uses), variances and appeals to ensure compliance with the applicable shoreland zoning ordinances and this chapter;

(b) May appeal the actions of county zoning officials to county boards of adjustment, under s. 59.694 (4), Stats.; and

(c) May seek court review of the decisions of boards of adjustment, under s. 59.694 (10), Stats.

**History:** Cr. Register, July, 1980, No. 295, eff. 8-1-80; am. (3) (b), Register, October, 1980, No. 298, eff. 11-1-80; corrections in (1), (2) (a) and (c), (3) (a) (intro.) and (b), (4) (b) and (c) made under s. 13.93 (2m) (b) 7., Stats., Register, April, 2000, No. 532; **CR 05-058: am. (2) and (3) Register January 2010 No. 649, eff. 2-1-10.**