



DUEY STROEBEL

STATE SENATOR • 20TH DISTRICT

Testimony on SB 900

February 8, 2022

Good afternoon everyone. Thank you for being here for today's hearing on Senate Bill 900, a bill I authored with Rep. Wittke with the aim of creating a framework to provide certainty surrounding legal title of former lakebed and riverbed land. This bill has been years in the making, including contributions from other colleagues in prior sessions who worked on it before stakeholders brought it to my attention last year.

SB 900 creates a process for a municipality to review a proposal for the establishment of a Great Lakes shoreline. A title holder who can prove a section of land was upland since December 9, 1977, among other criteria, can apply to the municipality in which the property is located for the ratification of a proposed shoreline. The municipality makes several determinations, including whether the proposed use will promote the interests of the public. If all determinations are made in the affirmative, the municipality submits the plan for DNR approval. If approved by the DNR, that parcel of land would be exempt from the commencement of any action to impair legal title on the basis of the land having been submerged lake bed at some time in the past.

SB 900 also provides clarity on whether landowners can use or build on pre-December 9, 1977 fill along certain commercial river ways. Before December 9, 1977 there was no permit required for permanent alterations, deposits or structures along navigable waters. It is unreasonable and overly burdensome to litigate the legitimacy of fill that occurred over 45 years ago. If the DNR has not initiated an enforcement action by 2022, it is reasonable to provide the legal certainty for the owner that the fill is usable.

At the heart of SB 900 is the desire to bring legal clarity to land ownership so local communities can make decisions about land use for the good of their respective communities. I have been in the legislature a decade now, and I have not always seen the amount of cooperation and agreement between the development community and the League of Municipalities I see on SB 900. Local leaders will be here to testify as to specific examples of how cloudy title that cannot be cleared under current law impacts their communities. I hope you will join me in figuring out a way to provide the certainty necessary for these urban renewal plans. Thank you.



ROBERT WITTKE

STATE REPRESENTATIVE • 62nd ASSEMBLY DISTRICT

**SENATE COMMITTEE ON GOVERNMENT OPERATIONS, LEGAL REVIEW AND
CONSUMER PROTECTION
PUBLIC HEARING – FEBRUARY 8, 2022**

Dear Chair and Committee Members,

Thank you for holding a public hearing on Senate Bill 900 relating to the use of fill in commercial waterways and establishing shorelines of Great Lakes waters. Senate Bill 900 is a bill that was brought to me by the Wisconsin Realtors Association and the League of Wisconsin Municipalities to fix a title issue for lands adjacent or near to a waterway. In particular, waterways of Ashland, Bayfield, La Crosse, Milwaukee, Oshkosh, Sheboygan, Sturgeon Bay, and Superior have experienced challenges where land was once part of a waterway but was filled decades ago by natural processes or perhaps as part of a legislative or common law authorization. Most of the land at issue is located in the urban areas where land was developed for commercial and industrial use.

Senate Bill 900 includes a “lake section” and a “rivers section” because ownership issues are different for each. The “lake section” allows a municipality to determine the shoreline after the record title holder make application for a determination. Shoreline is considered the boundary between upland and property water-ward in this bill. Once the municipality has approved the shoreline determination, the Department of Natural Resources will have a review period to include public hearing within 30 days after receiving the request from the municipality. The department shall make their determination no later than 60 days following the public notice, and shall adopt the shoreline unless the property is not upland, or is not supported by substantial evidence that the shoreline is within the public interest.

The “rivers section” would allow an owner of filled property – filled since December 9, 1977 and located on one of the 12 designated commercial industrial rivers or harbors listed in the bill – to use the property for any public or private purpose within restrictions of prior river bed designations.

Senate Bill 900 is an important bill to give clarity to an issue that has been of concern to entities looking forward to developing land that is no longer submerged. This is an opportunity to drive economic growth in some parts of Wisconsin where growth has been stalled or even thwarted by titling issues.

Again, thank you for holding this public hearing. I hope the committee will move forward and pass Senate Bill 900 out of committee.



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To: Senate Committee on Government Operations, Legal Review, and Consumer Protection
From: Toni Herkert, Government Affairs Director, League of Wisconsin Municipalities
Date: February 8, 2022
RE: Senate Bill 900, relating to Great Lakes and Commercial Rivers Historic Fill

Chairman Stroebel, Vice Chair Felzkowski and Committee Members,

My name is Toni Herkert and I am the League of Wisconsin Municipalities Government Affairs Director. The League represents nearly 600 municipalities, both large and small throughout the state including those communities on the coasts of Lake Michigan and Lake Superior.

You have heard comments from my colleagues on this bill, but I wanted to bring a municipal perspective for you all to think about as you listen to the remainder of the testimony today. Great Lakes coastal communities need this legislation to make it possible to redevelop dilapidated or underutilized waterfront property that hasn't been submerged for half a century. There are areas in our Great Lakes coastal communities where lands have been treated as private land and utilized for private industrial, commercial or residential development for decades. People are or have lived and conducted business on these parcels. They are or have paid property taxes on these parcels. Yet, redevelopment of these parcels may not be possible if they are considered lakebed property subject to the public trust doctrine. Issues often arise with historically filled lands when there is a change in use or a request for redevelopment.

This bill establishes a process for clarifying title to these formerly submerged lands and providing Great Lakes communities with opportunities to improve contaminated and blighted parcels along the shoreline. Under this bill, communities can turn an eye sore into a vibrant public-private partnership that combines private development with public amenities and creates a better and higher use of the property for residents and visitors alike. Creative municipal leaders envision a bustling waterfront welcoming the public with parks, concert venues, walking trails and increased lake access.

To accomplish the goal of revitalizing our Great Lakes' waterfronts requires private development that will help fund the public amenities and the remediation work associated with preparing sites. To secure financing for these projects, title companies and investors need certainty that a project can proceed. Even though it is apparent that historic fill prior to 1977 is not being removed and that the land will stay intact, unfortunately, the certainty necessary cannot be realized today. Creating a process to allow a property to be utilized to produce the best results for the overall community is in the public interest.

Wisconsin's leaders at the municipal level, mayors, city managers or administrators, and village presidents along with their councils and boards work tirelessly to balance competing needs in their communities every day. SB 900 creates a process for municipalities to determine the shoreline at

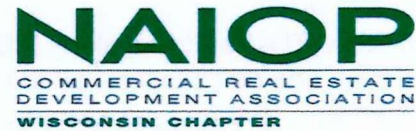
the current OHWM for single parcels or a group of parcels if it is in the public interest. This determination is voluntary by the landowner and subject to review by the DNR.

SB 900 only addresses parcels that have been filled since 1977 on or near Lake Michigan and Lake Superior and the 12 commercial/industrial rivers that are tributaries of the Great Lakes.

It is important to note that SB 900 does NOT address new fills, any inland lakes, rivers and streams other than the 12 enumerated in the bill, legislative lake bed grants or lake bed leases.

I would like to thank the authors for their work on this bill, the partners the League has worked with over the years to bring us to this point today, and the Department of Natural Resources for being involved in the original scoping of the approach that this bill takes. The legislation is very different than what was contemplated in the past and we believe the constructive conversations led to a better product. We realize there may be additional recommendations that will be discussed today and the League looks forward to working cooperatively to move this bill through the legislative process.

We ask the committee to advance SB 900. Thank you for your consideration. If you have any questions, please contact me at therkert@lwm-info.org.



To: Members, Senate Committee on Government Operations, Legal Review and Consumer Protection

From: Tom Larson, WRA Executive Vice President and Chief Lobbyist for NAIOP-WI; Toni Herkert, League of Wisconsin Municipalities Government Affairs Director; Brad Boycks, Wisconsin Builders Association Executive Director; and Michael Welsh, Wisconsin Economic Development Association Vice President of Legislative Affairs and Communications

Date: February 8, 2022

Re: AB 849/SB 900 – Resolving Legal Title Issues Related to Historic Fills of Waterfront Property

The League of Wisconsin Municipalities, Wisconsin REALTORS® Association, NAIOP-WI, Wisconsin Builders Association, and the Wisconsin Economic Development Association support AB 849/SB 900, legislation aimed at resolving legal title disputes on property that has been filled for over 40 years to allow Wisconsin municipalities to redevelop commercial and industrial waterway areas along the Great Lakes and commercial rivers.

Overview – Numerous Wisconsin municipalities (e.g., Ashland, Bayfield, Milwaukee, Oshkosh, Sheboygan, Sturgeon Bay, Superior) located along the Great Lakes are having difficulty redeveloping and making constructive use of their shorelines because of legal title issues associated with the land adjacent to or near the waterway.

In most cases, this land was once part of the waterway, but was filled several decades ago (generally, prior to 1960) either through natural processes or as part of a legislative or common law authorization. Below are some of the most common ways in which legal title has been conveyed over the years to once-submerged lands:

Regulatory/Legislative Authorizations. There have been several types of legislative grants of title or similar authorizations used with respect to filling of navigable waters:

- Legislative lakebed grants which grant title to local governments for specified public purposes (see e.g., 2015 Wis. Act 11, granting Brown County legal title of certain submerged lands in Green Bay).
- Bulkhead line approvals and submerged land leases (Wis. Stat. §§ 24.39 and 30.11) which allow structures and fills to be placed to a designated line into the water. A bulkhead line is a water boundary established by a municipal ordinance in accordance with Wis. Stat. § 30.11 which approximates the OHWM. Some bulkhead lines require submerged land leases with respect to filled areas executed by the board of commissioners of public lands.
- Wis. Stat. § 30.12 (and its predecessors) authorized fill for specified navigational purposes by permit but did not convey title.

Common Law Authorizations. There are two common law doctrines that have been applied to grant title to filled lakebed without legislative authorization.

- Accretion. The courts regularly addressed changing shorelines from the natural processes of accretion and reliction through the quiet title actions, often with little discussion of public trust concerns.
- Adverse possession. As early as 1878, the statutes authorized adverse possession claims against the state, and made no exception for trust lands. In 1957, the legislature excluded certain categories of state trust lands from the reach of adverse possession but those identified lands did not include lakebed; rather, they were school lands, university lands, swamp lands and the like. In 2016 that exclusion became absolute to all state property.

Some case law has been interpreted to mean that lakebed is owned by the public and/or protected by the Public Trust Doctrine under Wisconsin's Constitution and thus title cannot be conveyed to private individuals. Without a resolution to these title issues, obtaining title insurance and financing necessary for the redevelopment of this property is problematic. (Note – most of the land at issue is located in urban areas, has already been developed and has historically been used for commercial or industrial purposes).

Ownership Issues Are Different for Riverbeds and Lake Beds. The ownership of riverbeds and lake beds has an important legal distinction. In the case of lakes, the title to the beds is held by the state. For riverbeds, the title is held by the riparian owner, but this title is qualified by the rights of the public to use the water for navigation. Accordingly, AB 849/SB 900 contains two separate sections to recognize these differences – a Great Lakes section and a rivers section.

Great Lakes section– Under the Great Lakes section of AB 849/SB 900, a municipality may determine the shoreline (boundary between upland and property waterward) after an application by a record title holder of a Great Lakes property. All of the following conditions must be met for a property to be designated as landward of the shoreline:

- The property includes portions of land that may have been part of the submerged bed of Lake Superior, Lake Michigan, Green Bay or Sturgeon Bay at the time of statehood.
- The property includes portions of land that are at an elevation above the current ordinary high-water mark since December 9, 1977 (except for temporary maintenance activities or because of accretion or reliction),
- The property is within a municipality (city or village),
- The property is not subject to a lake bed grant or a submerged land lease and is not landward of the shoreline established for a portion of the City of Milwaukee under s. 30.2038,
- The approval of the shoreline is in the public interest, and the proposed use will promote the interests of the public, which may include public rights in navigable waters, public use, economic development or redevelopment, the elimination of blight, remediation of brownfields, and settling uncertainty in title.

DNR, with the option of a hearing, will review the municipality's shoreline decision. A final determination under this bill establishes the shoreline for purposes of clarifying the boundary of title between land held in trust by the state and land held in fee title ownership.

Rivers section– Under the industrial rivers section of AB 849/SB 900, an owner of filled property that was once river bed may use the property for any public or private purpose without restrictions imposed as a result of the prior status of the property as river bed if the property is located on one of the designated commercial industrial rivers listed in the bill, the property has been filled since December 9, 1977, and either of the following conditions are met:

- The fill is unauthorized and the DNR has not initiated enforcement action prior to the effective date of the bill,

- If the fill is landward of an authorized bulkhead line the use of the filled area is not specifically restricted by the terms included in a submerged land lease.

We respectfully request your support for AB 849/SB 900. If you have questions or need additional information, please contact us.



To: Senate Committee on Government Operations, Legal Review and Consumer Protection
From: Tony Wilkin Gibart, Midwest Environmental Advocates, Inc.
Date: February 8, 2022
Re: Opposition to Senate Bill 900

Thank you for the opportunity to provide testimony today in opposition to Senate Bill 900. My name is Tony Wilkin Gibart, and I am executive director of Midwest Environmental Advocates. MEA is a non-profit law center that has a history of defending and enforcing the Public Trust Doctrine of Wisconsin's State Constitution.

Our opposition to Senate Bill 900 is rooted in the text of the State Constitution, which in Article IX, Section 1, says:

...the river Mississippi and the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the state as to the citizens of the United States, without any tax, impost or duty therefor.

Under the Public Trust Doctrine, the state holds both the title to lakebeds and right to use rivers in trust for the people of the state. As will be discussed below, public trust protections include public use of filled lakebed. The constitution guarantees that the legislature cannot abrogate its trust responsibilities, in the similar way that the legislature cannot, through a bill, override the State Constitution's guarantee of free speech.

Our right to the waters of the state is not theoretical. It is a right that Wisconsinites use and cherish every time we access and enjoy the waters of the state.

While there may be isolated examples brought forward to justify this legislation, the effect of the bill could be sweeping, limiting public rights to countless miles of shoreline. In many places, especially in developed areas, the shores of rivers and of Lakes Michigan and Superior are lined with historic fill. Attempting to change these lands from public trust lands to private property could dramatically impact the public's constitutional right to use and enjoy our treasured waterbodies.

Specifically, this bill creates a process by which a private property owner can gain purported ownership of lakebed land that the state holds in trust for the people of Wisconsin. It does so by granting municipalities the power to change the boundaries between public trust land and private property.

This is akin to a law that allows one private property owner to redraw the property line separating that person from their neighbor. An objecting neighbor would probably not be satisfied by the justification that nothing was taken because the neighbor still owns everything on their side of the boundary.

Similarly, the legislature cannot privatize public trust land by giving municipalities the power to change boundaries. The constitutional boundaries were set at statehood when the people of Wisconsin reserved for ourselves title over lakebeds. While the legislature may enact laws that reasonably determine where the boundary between land and water was at statehood, the legislature cannot create a law that redraws the boundary for reasons that have nothing to do with upholding the Public Trust Doctrine, such as “economic development” or “settling uncertain title.” However, this is exactly what the bill does.¹

Therefore, while the intent of the bill is to create legal certainty, the bill will in fact spawn litigation and uncertainty.

To explain further, let me start with the memo provided by the Wisconsin Realtors Association (WRA) in support of the legislation. The memo understates the constitutional prohibition against conveying lakebed for private use:

There is also some case law that has been interpreted to mean that lakebed is owned by the public and/or protected by the Public Trust Doctrine under Wisconsin’s Constitution and thus title cannot be conveyed to private individuals.²

First, this passage should itself give the committee pause. One of the main proponents of the bill admits the state constitution may prohibit the very thing the bill does: give title to lakebed fill to private individuals. In the memos justifying the legislation, the proponents have not explained how a simple act of the legislature can alter the status of our constitutionally protected interest in public trust lands.

Second, the WRA memo’s characterization of the Public Trust Doctrine does not do it justice. In contrast, consider that the legislature’s own agency, the Legislative Reference Bureau (LRB), says this:

¹ And the same basic constitutional issues apply to the portion of the bill that deals with fill in rivers. Through the Public Trust Doctrine, we, the people of Wisconsin, reserved the right to access all navigable waters, including the specific rivers enumerated in the bill. While riparian owners on rivers have title to the middle of the waterway, that title is qualified by the public’s superior right to access the river for public trust purposes.

² December 6, 2021 Memo of Tom Larson, WRA Senior Vice President of Legal and Public Affairs and Chief Lobbyist for NAIOP-WI and Toni Herkert, League of Wisconsin Municipalities Government Affairs Director regarding LRB 4719 – Resolving Legal Title Issues Related to Historic Fills of Waterfront Property.

The public trust doctrine, for all the simplicity of its language, is a sweeping protection of public rights that has been jealously guarded by the courts for over 150 years. Time and time again, courts have heeded the call of the Wisconsin Supreme Court, writing in [the 1914] Diana Shooting Club decision: “The wisdom of the policy which, in the organic laws of our state, steadfastly and carefully preserved the people the full and the free use of the public waters, cannot be questioned. Nor should it be limited or curtailed by narrow construction. It should be interpreted in the broad and beneficent spirit that gave rise to it in order that the people may fully enjoy the intended benefits.”³

The LRB goes on to say that the Wisconsin Supreme Court reaffirmed the vitality of this position in a 2018 decision, when then-Chief Justice Roggensack said the 1914 passage “remains good law.”⁴

I cite these passages to point out that the Public Trust Doctrine is alive and well. While admittedly lawyers will quibble about the exact requirements for lawful use of public trust land under the doctrine, the relevant criteria in the bill are wholly unrelated to the applicable constitutional standards. The unconstitutionality of this bill is not a close call.

The leading case on the use of public trust land is *State v. Public Service Commission*, 275 Wis. 112, 81 N.W.2d 71 (1957). In that case, the Wisconsin Supreme Court outlined the following criteria for constitutionally permissible uses of public trust land:

1. Public bodies will control the use of the area;
2. The area will be devoted to public purposes and open to the public;
3. The diminution of lake area will be very small when compared with the whole of the lake;
4. Public uses of the lake are not destroyed or greatly impaired; and
5. The impairment of public rights to use the lake for recreation should be negligible compared to the greater convenience afforded to the public.

As you can see, there is a direct conflict between the Supreme Court’s interpretation of the Public Trust Doctrine as applied to filled waterways and private use of fill. Still, the bill creates a “public interest” standard for granting private ownership, a standard that will clash with the constitutional requirements. As a result, under the bill, boundaries can be redrawn in ways that will invite litigation, and it is likely reviewing courts will be required to invalidate the bill entirely or at least many individual applications of it. As a result, the state of the law will be more confusing, uncertain and risky for property owners.

Furthermore, even if the “public interest” standard under the bill was compatible with the public use requirements of the constitution, the legislation would be flawed because it does not

³ Zachary Wyatt, *The Public Trust Doctrine*, Wisconsin Legislative Reference Bureau - Reading the Constitution., Aug. 2020, at 14.

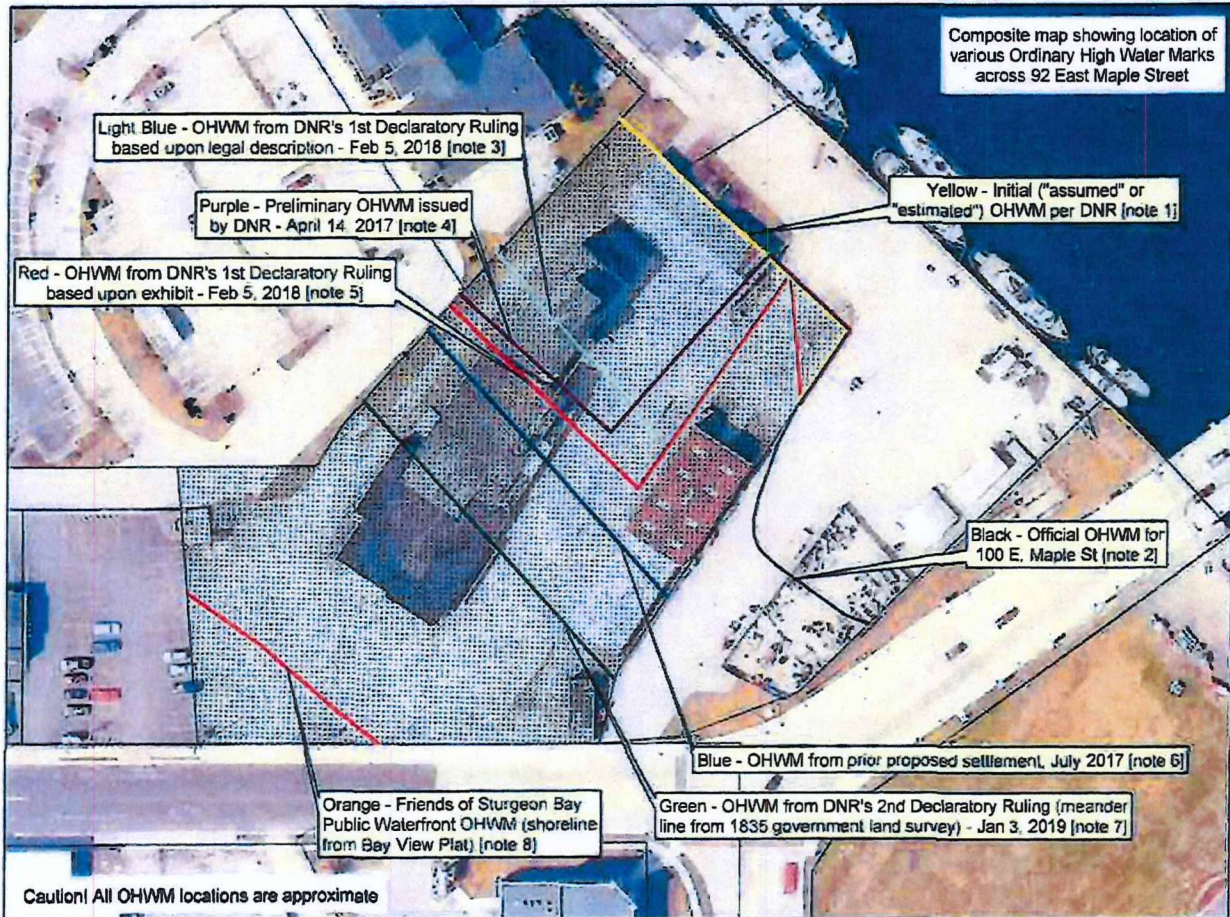
⁴ *Id.* (citing *Movrich v. Lobermeier*, 2018 WI 9, 379 Wis. 2d 269, 905 N.W.2d 807).

condition future use of a piece of land on the use that a municipality determined was in the “public interest.” The bill under, a person who claims ownership of a piece of public land can propose a purpose that requires the municipality and the state to grant them private ownership, but nothing in the bill requires that the would-be owner follow through on that purpose. Moreover, the bill does not prevent future uses by that owner or subsequent owners that have no relationship to the “public interest.” Again, far from settling questions, this bill will spark litigation and uncertainty as land is used for purposes other than what was condoned during the municipal approval process.


Thank you again for the opportunity to provide testimony. I would be happy to answer questions.

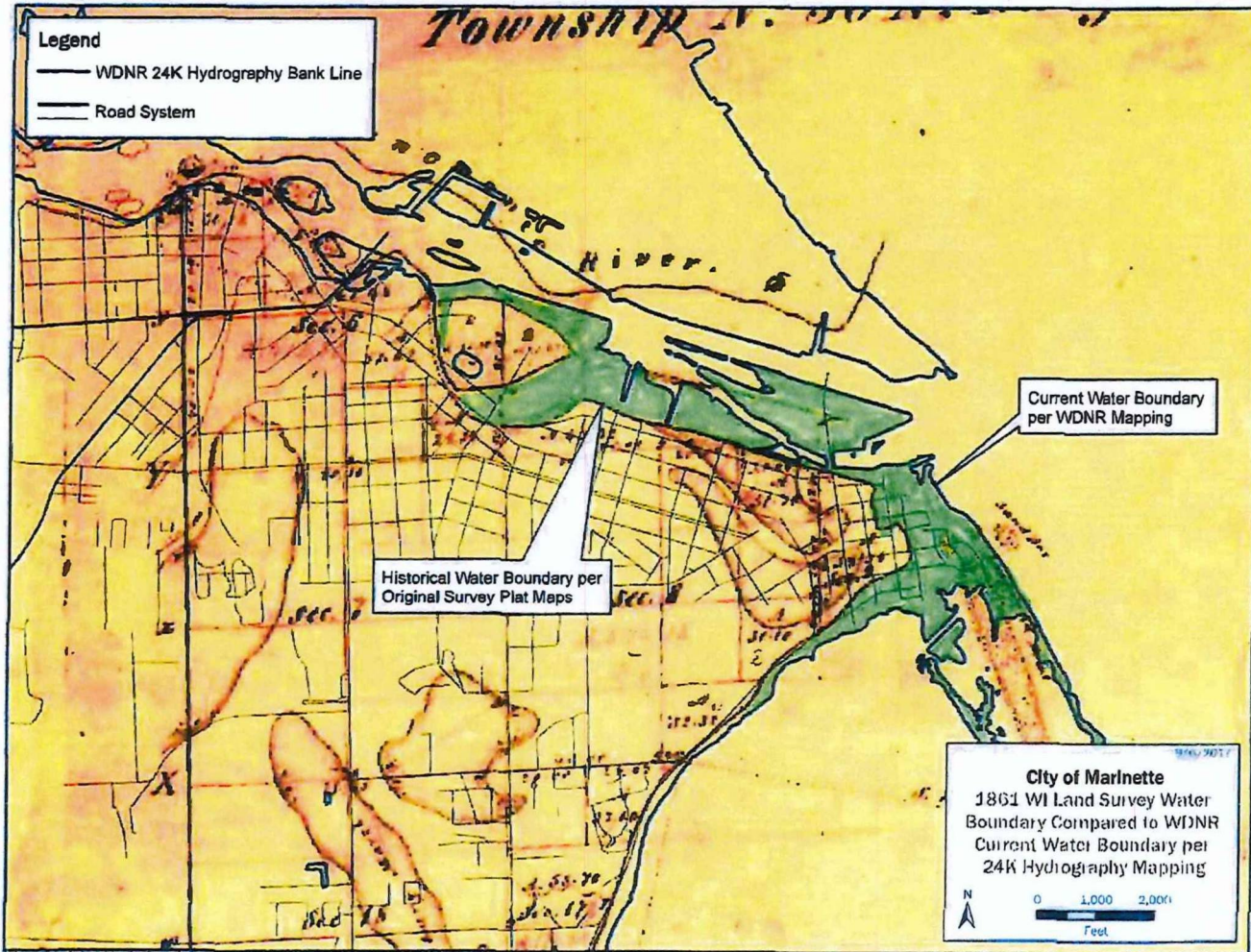
Sturgeon Bay, WI

Example ordinary high water mark (OHWM) determination



Marinette, WI

 Approximate filled area




Information depicted on this figure is for comparative purposes only and cannot be used to measure land areas or for land survey purposes.

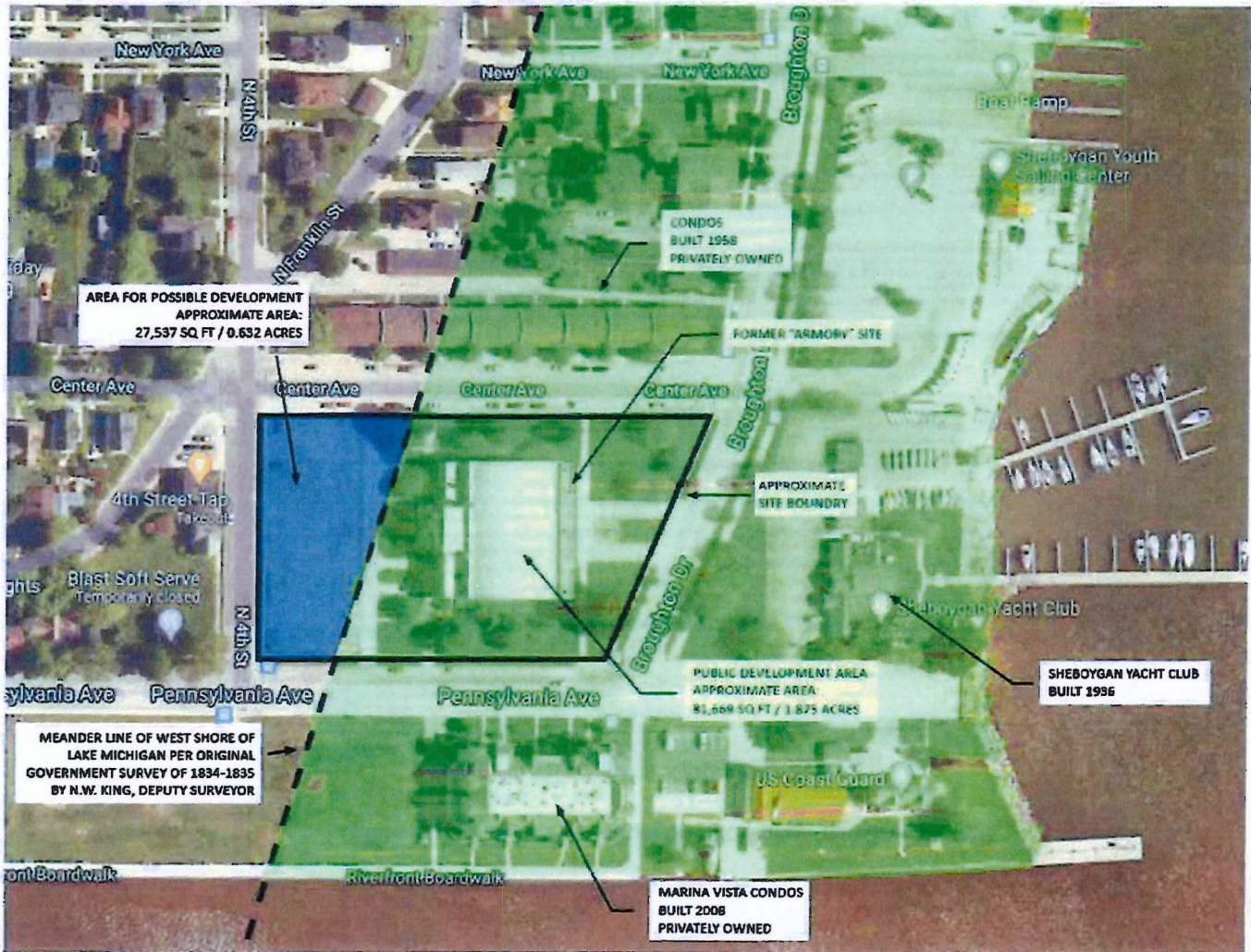
Marinette, WI

 Approximate filled area




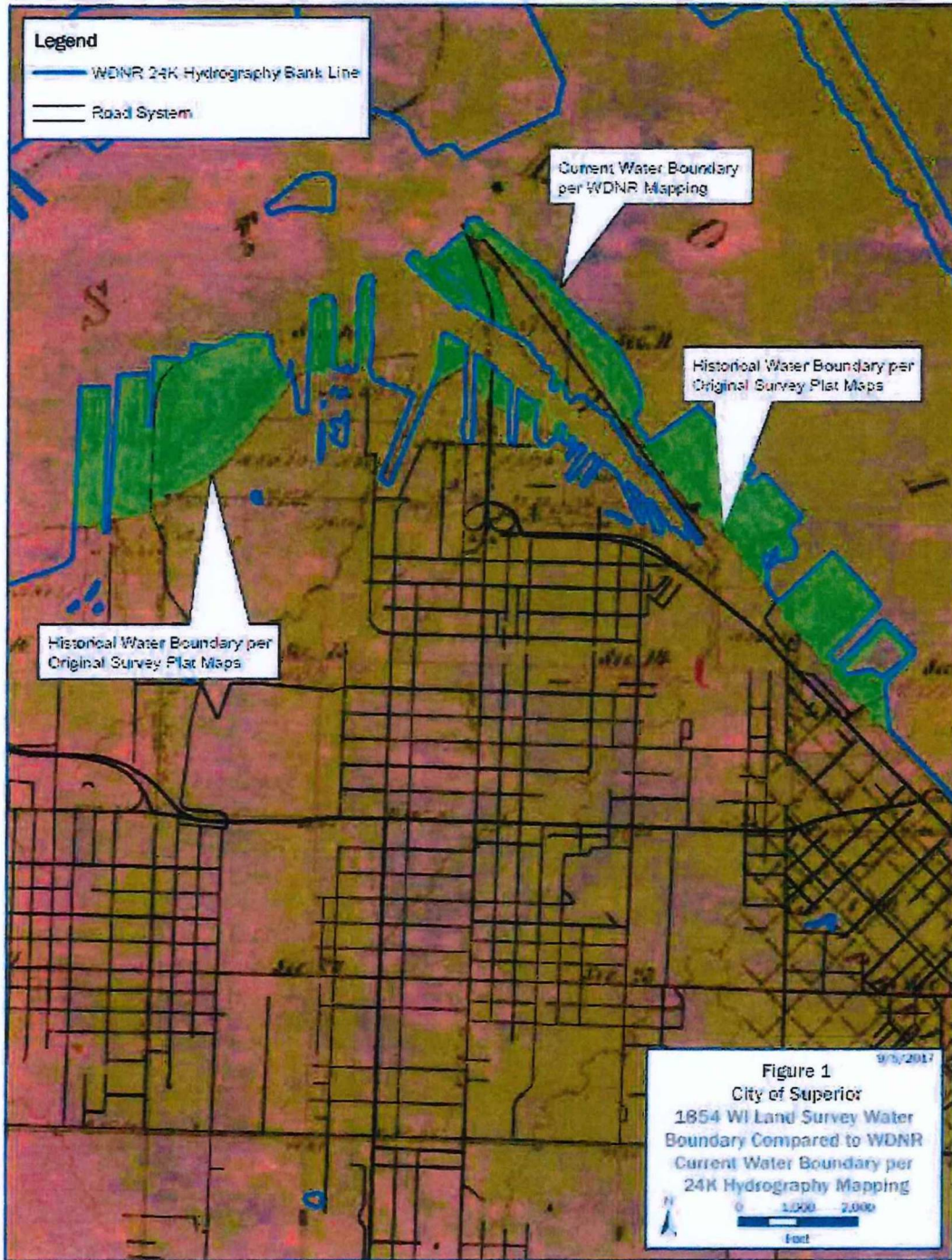
Sheboygan, WI

 Approximate filled area




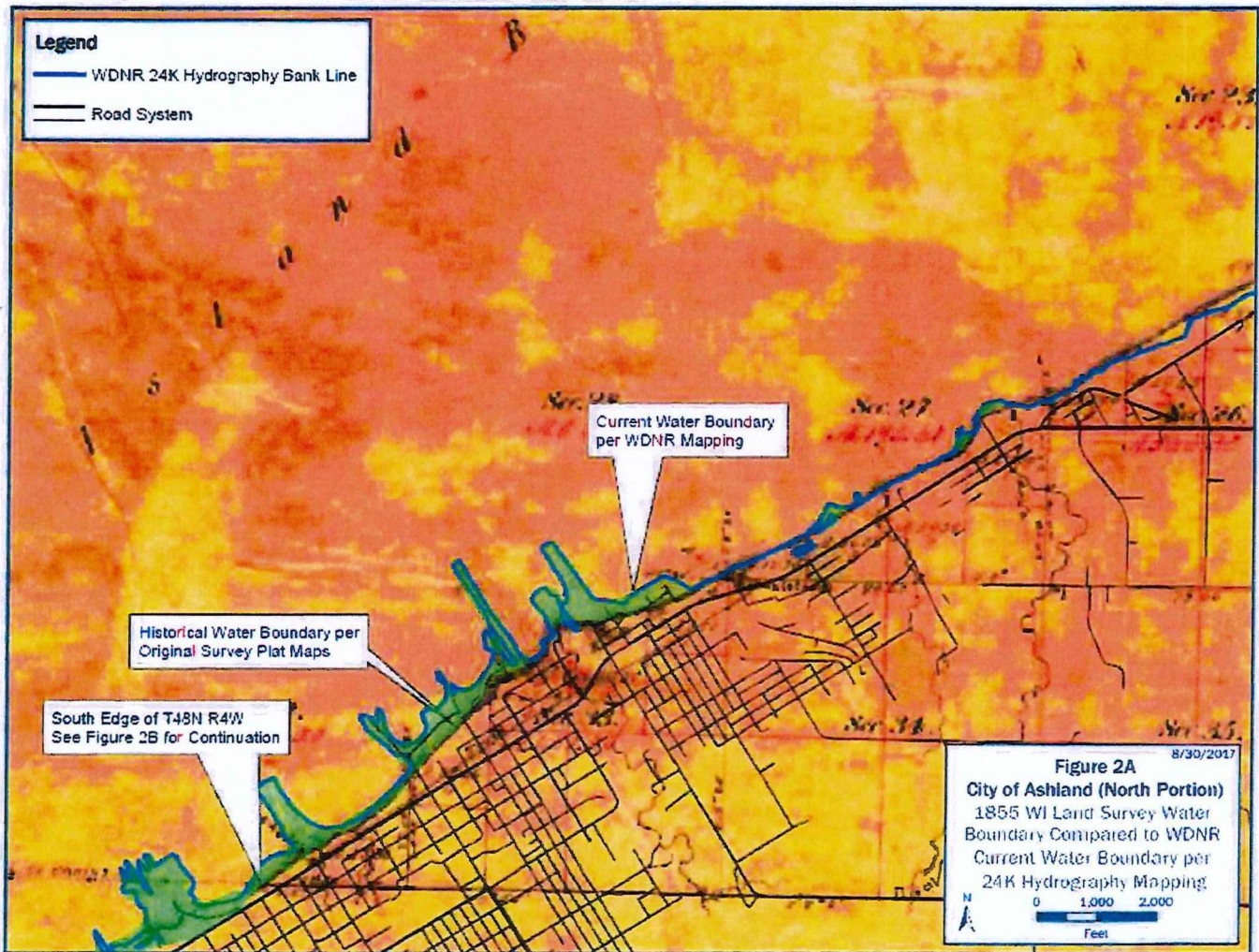
Superior, WI

 Approximate filled area




Ashland, WI

 Approximate filled area



Manitowoc, WI

 Approximate filled area



Composite map showing location of various Ordinary High Water Marks across 92 East Maple Street City of Sturgeon Bay

Light Blue - OHWM from DNR's 1st Declaratory Ruling based upon legal description - Feb 5, 2018 [note 3]

Purple - Preliminary OHWM issued by DNR - April 14, 2017 [note 4]

Yellow - Initial ("assumed" or "estimated") OHWM per DNR [note 1]

Light Green - 1955 State approved bulkhead line

Blue - OHWM from initial proposed settlement, July 2017 [note 6]

Black - Official OHWM for 100 E. Maple St [note 2]

Red - OHWM from DNR's 1st Declaratory Ruling based upon exhibit - Feb 5, 2018 [note 5]

E. Maple St

Orange - Friends of Sturgeon Bay Public Waterfront OHWM (shoreline from Bay View Plat) [note 8]

Green - OHWM from DNR's 2nd Declaratory Ruling (meander line from 1835 government land survey) - Jan 3, 2019 [note 7]

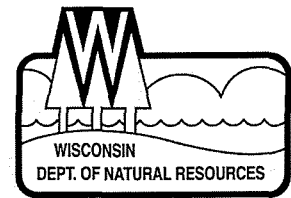
Oregon St Bridge

Caution! All OHWM locations are approximate

Air photo is from April 2013

Notes regarding the Ordinary High Water Mark location for 92 E. Maple St, City of Sturgeon Bay

1. The yellow line is based upon the DNR meeting notes of Nov. 22, 2013, deposition of DNR staff Carrie Webb from Sept 21, 2016, and letter from DNR Deputy Secretary Kurt Thiede dated Jan 24, 2017.
Public Trust land = 0 acre Non-public trust land = 2.24 acres
2. The black line matches the described line within the DNR Concurrence with the OHWM recorded Oct 28, 2014 and ratified by the circuit court judge. This is the parcel at 100 E. Maple Street and does not directly impact the various OHWM's on 92 E. Maple St.
3. The purple line is the described line in the DNR's preliminary OHWM determination dated April 14, 2017. That determination carved out a 131' x 150' portion of the parcel that included the grain elevator.
Public Trust land = 0.46 acre Non-public trust land = 1.78 acres
4. The orange line is the OHWM that the "Friends" group (litigants) put forth by their testimony during the hearing for the DNR declaratory ruling. It is the presumed shoreline from the plat of the Village of Bay View (1873), which is the earliest subdivision plat in the area.
Public Trust land = 2.11 acre Non-public trust land = 0.13 acres
5. The blue line is a depiction of the proposed OHWM that came out of mediation held during 2017. This line is 60 feet waterward of the meander line from the original government land survey of 1835. The settlement line was approved by the Sturgeon Bay Common Council in July of 2017, but not by the Waterfront Redevelopment Authority.
Public Trust land = 0.96 acre Non-public trust land = 1.28 acres
6. The light blue line follows the legal description contained in the DNR's Declaratory Ruling issued Feb. 5, 2018, a portion of which is 125 feet waterward of the meander line from the original government land survey. The declaratory ruling was subsequently withdrawn.
Public Trust land = 0.48 acre Non-public trust land = 1.76 acres
7. The red line matches the location of the OHWM as depicted in the exhibit contained in the DNR's Declaratory Ruling issued Feb. 5, 2018. The exhibit and the legal description did not match and the declaratory ruling was subsequently withdrawn.
Public Trust land = 0.64 acre Non-public trust land = 1.60 acres
8. The green line is the OHWM from the DNR's second declaratory ruling dated January 3, 2019 and is based upon a negotiated line between the City and "Friends" group. It is based upon the meander line described by the original government land survey. This is OHWM was then ratified by the circuit court and is in use today.
Public Trust land = 1.28 acre Non-public trust land = 0.96 acres



Senate Committee on Government Operations, Legal Review and Consumer Protection

2021 Senate Bill 900

Use of Fill in Commercial Waterways and Establishing Shorelines of Great Lakes Waters

February 8, 2022

The Wisconsin Department of Natural Resources (DNR) welcomes the opportunity to provide written testimony on Senate Bill 900 (SB 900), related to the use of fill in commercial waterways and establishing shorelines of Great Lakes waters.

The department appreciates the strong legislative, judicial, and public support of the public trust in the waters of Wisconsin. The constitutionally based public trust doctrine protects the rights of our citizens for navigation and recreation in our waterways. The public trust doctrine likewise protects water quality, aquatic habitat, and the natural scenic beauty of our waterways.

SB 900 seeks to address a set of similar, yet legally and factually distinct issues related to historic fill of public waterways. The department believes that certain aspects of these issues may be readily addressed by the legislature to provide clarity and certainty. For example, there are properties in some of our coastal communities with portions of the property that is legally and technically lakebed fill without authorization, that are landlocked and not directly adjacent to the current edge of the lake, but have been filled and dry for decades. Cleaning up title on these lands makes sense.

There are also individual homeowners and small business owners in some of our coastal communities with portions of their property that is legally and technically lakebed, for which no legal lakebed grant has ever been issued by the Legislature. These lands are directly adjacent to the current edge of the lake, but have been filled and dry for decades. We have typically relied on enforcement discretion where no expansion or change in use is occurring. Cleaning up title on these lands also makes sense.

The department could support adding more certainty for the DNR, municipalities, and developers for particular areas of the coastline, and perhaps harbors, that are legally and technically lakebed, and therefore public land held in trust by the state, for which no legal lakebed grant has ever been issued by the Legislature. Likewise, there is value in providing certainty regarding the use of filled riverbeds in commercial waterways. These lands are ~~directly adjacent to the current edge of the water, but have been filled and dry for decades. There is value in~~ exploring ways to avoid costly legal challenges and complex permitting for these sites by looking at a process with statutory clarity on where some development could occur, coupled with real incentives for providing meaningful and substantial public use amenities and adequate funding to maintain the public use aspects. The goal could be to devise a way to meet the public trust doctrine requirements by balancing some loss of the public values in the historic lakebed or riverbed, with the allowance of some private development, and including real increases in public use of the coastline.

The department has concerns with how the bill is currently drafted and would welcome an opportunity to sit down with the author and others to discuss ideas for amendments to this bill that could add clarity to some of the

proposed definitions. The department would also welcome additional conversation on process elements that would more clearly recognize and enhance the public rights in these areas.

Thank you for the opportunity to provide this written testimony. If you have questions or if there is any further information the department can provide, please feel free to contact Sean Kennedy, DNR Legislative Director, at Sealp.Kennedy@Wisconsin.gov.



TO: Members of the Wisconsin State Legislature

FROM: City of Sheboygan, Office of the Mayor

RE: AB 849/ SB 900– Resolving Legal Issues Related to Historic Fills by Waterfronts

Overview: The City of Sheboygan has several plots of land that are within an area that was surveyed in 1835 (before Wisconsin became a State in 1848) which prevents us from development. The DNR has moved the goal post and changed the rules on how cities can pursue development in these areas.

Background: The City of Sheboygan was originally incorporated as a city in 1853, just a few years after Wisconsin became a State in 1848. Before Wisconsin became a State, a survey was conducted in 1835 which outlined the boundaries of the Lake Michigan and Sheboygan River shoreline. Many decades ago, the shore line has changed by both natural and human means. Currently, there are many private and publicly owned buildings and lots that are on the infill areas where the original lakebed was many decades ago. Additional entities that are included in this area include several businesses, privately owned homes, a YMCA, a large resort, a coast guard station, and many supporting infrastructure needs.

The undeveloped parcels in the City of Sheboygan that would benefit from this legislation equates to about 5 acres of developable space adjoining Lake Michigan. The city estimates that approximately \$10 million of taxable value could be created for each 1 acre of land. The estimated 5 acres of land could equate to about \$50 million in new taxable income for the City of Sheboygan. It should also be noted that the larger of the parcels (the 2.44-acre parcel) that falls within these new requirements has been privately owned as lumber company as shown on Sanborn Fire Insurance Maps starting in 1867 to the early 1940's when the property was redeveloped.

Recommendation: We ask for your support on this legislation. This legislation will help our community continue to grow and will allow constructive development to take place. Cities need to grow to survive, and this legislation will help us stay on a positive path forward.

Office of the Mayor

CITY HALL
828 CENTER AVE.
SHEBOYGAN, WI 53081

920-459-3317
www.sheboyganwi.gov



Dear Members of the Wisconsin Legislature,

I wanted to reach out to you regarding AB 849/SB 900, the legislation that focuses on resolving legal issues related to historic fills near waterfronts. I just want to come out of the gate and say that the City of Sheboygan is in favor of this bill. This bill is vital to the growth and success of our community.

I want to assure you that this legislation does not impact public trust concerns or impede access to our water ways. Sheboygan is one of the most accessible municipalities to access Lake Michigan and the Sheboygan River. In fact, the current boundary of infill includes; several private homes, a YMCA, a Coast Guard Station, a large resort, and several other private and publicly owned lots. The DNR has changed its interpretation of the rules for how cities can pursue development, which has made planning more difficult.

I ask for your support on AB 849/SB 900. If this bill is passed, Sheboygan will be able to continue to pursue responsible development which can have an economic impact of \$50 million.

If you have any additional questions please feel free to reach out to my office. I would also like to extend an invite to your and your staff to visit Sheboygan so you can see our situation first hand.

Thank you for your service to our State.

Dutifully,

Ryan Sorenson
Mayor
City of Sheboygan

Office of the Mayor

CITY HALL
828 CENTER AVE.
SHEBOYGAN, WI 53081

920-459-3317
www.sheboyganwi.gov

January 31, 2022

To: Wisconsin Legislators

From: Sheboygan County Economic Development Corporation

RE: AB 849 – Resolving Legal Title Issues Related to Historic Fills of Waterfront Property

The Sheboygan County Economic Development Corporation would appreciate your support of AB 849 in resolving this critical legal matter, so that local parcels which are prime for redevelopment can be advanced. The parcels in question are not greenfield sites but were previously developed and utilized by both private sector businesses and area governments for community functions.

In the City of Sheboygan, the parcels are prime lots near Lake Michigan but not necessarily on the waterway. In previous decades, these lots or similar lots saw the advancement of residential housing units, a Coast Guard station, and a large resort.

With your passage of this legislation, the City of Sheboygan will be able to fully implement a redevelopment strategy that has been over a decade in the making. The passage of this legislation is vital for residents and visitors alike to maximize their enjoyment of the fantastic lakefront access already available in Sheboygan.

Thank you for your consideration.

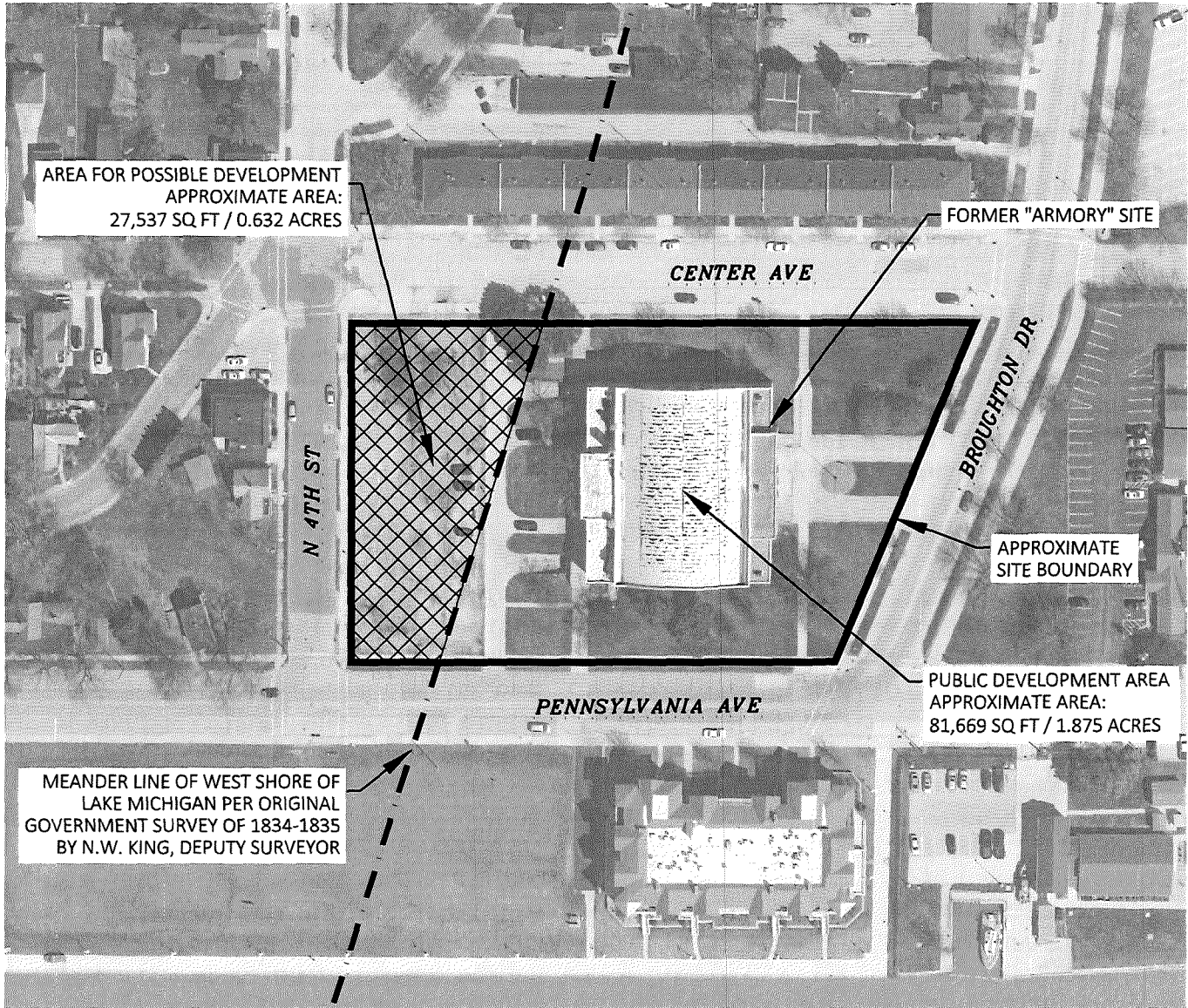
Sincerely,



Brian Doudna
Executive Director
920-946-9378

CITY OF SHEBOYGAN

FORMER "SHEBOYGAN MUNICIPAL AUDITORIUM AND ARMORY" SITE



NOTE:
 AS OF THE DATE ON THIS MAP, THERE HAS NOT BEEN A BOUNDARY SURVEY OF THE "ARMORY" PROPERTY PERFORMED. THE PROPERTY BOUNDARY AND AREAS SHOWN ARE APPROXIMATIONS ONLY.

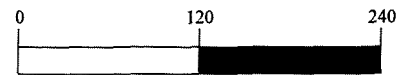
THIS MAP WAS PREPARED USING REFERENCE TO A MAP EARLIER PREPARED BY DAVID H. JACOB, P.L.S. OF JACOB LAND SURVEYING, LLC OF FOND DU LAC, WISCONSIN DATED 02/27/2019 AND IS ON FILE WITH THE CITY ENGINEERING DIVISION.

MAP PREPARED BY: MICHAEL P. BORN, PLS DATED: 07/30/2021

CITY OF SHEBOYGAN
PUBLIC WORKS
 Department of Public Works
 Engineering Division
 City of Sheboygan, Wisconsin
 Phone: 920-459-3440
 Fax: 920-459-3443



GRAPHIC SCALE



(IN FEET)

SHEET 1 OF 2 SHEETS

CITY OF SHEBOYGAN

FORMER "SHEBOYGAN MUNICIPAL AUDITORIUM AND ARMORY" SITE

**NOTE FROM RETRACEMENT SURVEY PERFORMED BY DAVID H. JACOB, P.L.S.
OF JACOB LAND SURVEYING, LLC - FOND DU LAC, WISCONSIN
DATED: 02/27/2019**

MAP OF 1835 SURVEY OF RIVER AND SHORELINE

THIS MAP WAS COMPILED USING SURVEY NOTES FROM THE ORIGINAL GOVERNMENT SURVEY (OGS) OF THE TOWNSHIP OF SHEBOYGAN, TOWN 15 NORTH, RANGE 23 EAST OF THE 4TH PRINCIPAL MERIDIAN WHICH WAS PERFORMED IN 1834 AND 1835 BY N.W. KING, DEPUTY SURVEYOR FOR THE UNITED STATES. THE PURPOSE OF THIS RETRACEMENT IS TO DETERMINE WHERE THE ORIGINAL SHORELINES OF THE SHEBOYGAN RIVER AND LAKE MICHIGAN WERE LOCATED BEFORE ANY FILLING AND/OR DREDGING WERE DONE, PARTICULARLY IN THE AREA OF THE SHEBOYGAN ARMORY SITE SHOWN ON THIS MAP. VARIOUS HISTORICAL MAPS AND PLATS WERE ALSO REVIEWED THAT DATE BACK TO 1836 ALONG WITH HISTORICAL TEXTS ON RECORD AT THE WISCONSIN HISTORICAL SOCIETY. BASED ON THIS INFORMATION I HAVE ASCERTAINED THAT THE LOCATION OF THE MOUTH OF THE SHEBOYGAN RIVER WAS MOVED SOMEWHERE BETWEEN THE YEARS OF 1852 AND 1856. THERE ARE HISTORICAL RECORDS OF A CONVENTION OF AREA LOCALITIES IN JANUARY OF 1852 IN WHICH IT WAS DECIDED TO IMPROVE THE RIVER FOR SHIPPING PURPOSES. PRIOR TO THIS TIME THE RIVER MOUTH WAS LOCATED IN THE AREA BETWEEN THE ORIGINAL MEANDER LINES SHOWN ON THIS MAP. THIS CORRESPONDS WITH ALL OF THE HISTORICAL MAPS PRIOR TO 1856. A SURVEY MAP DATED AUGUST, 1856, BY THE U.S. CORPS OF TOPOGRAPHICAL ENGINEERS IS THE FIRST MAP THAT I COULD FIND SHOWING THE LOCATION OF THE RIVER (HARBOR) JUST SOUTH OF PENNSYLVANIA AVENUE. THIS MAP, ALONG WITH AN 1840 PLAT MAP ALSO SHOWS THE SHORE OF LAKE MICHIGAN TO BE ROUGHLY 300 FEET EAST OF 4TH STREET AT THAT TIME. I RETRACED THE (OGS) FIELD NOTES ROUGHLY 6500 FEET NORTH OF THE CURRENT HARBOR TO WHERE I ASSUMED THE SHORELINE, ASIDE FROM NATURAL EROSION AND WATER LEVEL CHANGES, WOULD HAVE BEEN THE LEAST ALTERED SINCE 1835. AS SHOWN ON THE MAP, THE TRAVERSE OF THAT ORIGINAL MEANDER LINE FITS THIS SHORELINE WELL. IT ALSO MATCHES AN OVERLAY OF THE 1840 PLAT MAP. THE OGS FIELD NOTES ALSO INDICATE WHERE SECTION LINES WERE CROSSED DURING THE COURSE OF THE SURVEY. THESE LOCATIONS ARE SHOWN ON THE MAP AND SEEM TO FIT WITHIN A REASONABLE AMOUNT OF ERROR (5'-10'). THIS ERROR CAN BE ATTRIBUTED TO THE EQUIPMENT USED BACK IN 1835 AND REMONUMENTATION OF SECTION CORNERS SUBSEQUENT TO 1835. THE ONLY AREA OF THIS RETRACEMENT THAT APPEARS TO HAVE A LESS ACCURATE RESULT THAN EXPECTED IS THE MEANDER OF THE RIGHT (SOUTH) SIDE OF THE RIVER AS IT HEADS NORTHWESTERLY FROM THE 8TH STREET BRIDGE TO THE WEST LINE OF SECTION 23. THE 1835 MEANDER LINE SEEMS TO BE ABOUT 40 FEET FURTHER WEST THAN EXPECTED IN THIS AREA. THE TIE IN POINT FROM THE OGS NOTES WHERE THIS MEANDER CROSSES THE WEST LINE OF THE SW 1/4 OF SECTION 23 ALSO SEEMS TO BE OFF BY THE SAME AMOUNT. I CAN ONLY SPECULATE THAT THIS MAY BE ATTRIBUTED TO AN ERROR IN AN ANGLE OR DISTANCE IN THE OGS NOTES AS THE REST OF THE TRAVERSE SEEMS TO FIT AS EXPECTED.

Schmidt, Melissa

From: Cosh, Bill
Sent: Tuesday, February 08, 2022 12:03 PM
To: Schmidt, Melissa
Subject: FW: SB 900 Public Hearing

Hi Melissa,

We had a constituent who could not attend today's hearing, but wanted to submit the following.

Bill Cosh

-----Original Message-----

From: Kelly Catarozoli <kelly.catarozoli@gmail.com>
Sent: Tuesday, February 8, 2022 12:02 PM
To: Cosh, Bill <Bill.Cosh@legis.wisconsin.gov>
Subject: SB 900 Public Hearing

Dear Elected Officials,

I would like to submit my comments as a Wisconsin resident regarding SB 900. I strongly oppose this bill and any legislation that would diminish the rights granted to us in The Public Trust Doctrine. Our greatest shared asset whether rich or poor, is our public waterfronts and shorelines. We should only strive to strengthen any protections and rights granted to the public. Failure of certain communities, including my own city of Sturgeon Bay, to be financially responsible should not be justification for diminishing our rights to filled lakebed established at statehood. Allowing this suggests a short sighted fix that will rob future generations of the equity of public waterfront access, parks, views, green space, fishing... Let's not sell out our future. I would also like to make the committee aware that if representatives from the City of Sturgeon Bay speak in favor of this Bill on behalf of our city that their presence at the hearing was never voted on or approved by our City Council. Our City Council is our voice and representation. Please count anyone present only as individuals and NOT the voice of our City.

Thank you,
Kelly Catarozoli
330 N 3rd Ave
Sturgeon Bay, WI 54235
1-920-495-4995

Sent from my iPhone