

Chapter NR 115

WISCONSIN'S SHORELAND MANAGEMENT
PROGRAM

NR 115.01 Purpose	NR 115.05 Shoreland regulation stan-
NR 115.02 Applicability	dards and criteria
NR 115.03 Definitions	NR 115.06 Department duties
NR 115.04 Severability	

Note: Chapter NR 115 as it existed on July 31, 1980 was repealed and a new chapter NR 115 was created effective August 1, 1980.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. (1) Section 59.971, Stats., requires counties to adopt zoning and subdivision regulations for the protection of all shorelands in unincorporated areas by January 1, 1968, and provides that if the department of natural resources determines, after notice and hearing, that a county has not adopted a shoreland ordinance by January 1, 1968, or that a county has adopted an ordinance which fails to meet reasonable minimum standards in accomplishing the shoreland protection objectives found in s. 114.26, Stats., the department is to adopt a shoreland ordinance to be administered by that county.

(2) Section 114.26, 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."

(3) It is the responsibility of the department of natural resources, in the discharge of its mandate under ss. 59.971 and 144.26, Stats., to require adherence to specific standards and criteria for navigable water protection regulations and their administration. Section 144.26, Stats., provides that: "Such standards and criteria shall give particular attention to safe and healthful conditions for the enjoyment of aquatic recreation; the demands of water traffic, boating and water sports; the capability of the water resource; requirements necessary to assure proper operation of septic tank disposal fields near navigable waters; building setbacks from the water; preservation of shore growth and cover; conservancy uses for low lying lands; shoreland layout for residential and commercial development; suggested regulations and suggestions for the effective administration and enforcement of such regulations."

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80.

NR 115.02 Applicability. The provisions of this chapter are applicable to county regulation of the use and development of unincorporated shoreland areas. Unless specifically exempted by law, all cities, villages, towns, counties and, when s. 13.48 (13), Stats., applies, state agencies are required to comply with, and obtain all necessary permits under, local shoreland ordinances.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80.

NR 115.03 Definitions. For the purpose of this chapter:

Register, July, 1980, No. 295
Environmental Protection

(1) "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.

(2) "Department" means the department of natural resources.

(3) "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 chapter NR 116, Wis. Adm. Code.

(4) "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. 144.26 (2) (d), Stats., notwithstanding any other provision of law or administrative rule promulgated thereunder, shoreland ordinances required under s. 59.971, 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., Inc. 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.

(5) "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.

(6) "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. The regional flood is based upon a statistical analysis of streamflow records available for the 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.

(7) "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.

(8) "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.

(9) "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.

(10) "Unnecessary hardship" means that 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.

(11) "Variance" means an authorization granted by the board of adjustment to construct, alter or use a building or structure in a manner that deviates from the requirements of a shoreland zoning ordinance.

(12) "Wetlands" means those lands which are designated as wetlands on the Wisconsin wetland inventory maps prepared by the department; generally those areas where water is at, near or above the land surface long enough to support or 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.

NR 115.04 Severability. Should any provision of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80.

NR 115.05 Shoreland regulation standards and criteria. (1) **ESTABLISHMENT OF APPROPRIATE ZONING DISTRICTS.** Counties shall adopt shoreland ordinances that include, at a minimum, zoning regulations for shoreland-wetland zoning districts. Other types of districts (such as general purpose, agricultural, industrial, commercial, residential, recreational, conservancy, or wetlands districts) may be created in addition to shoreland-wetland zoning districts.

(2) **ESTABLISHMENT AND REGULATION OF SHORELAND-WETLAND ZONING DISTRICTS.** (a) *County review of preliminary wetland inventory maps.* Before the department prepares final Wisconsin wetland inventory maps:

1. The department shall transmit to the county zoning agency designated under s. 59.97 (2) (a), Stats., copies of preliminary wetland inventory maps for that county.

2. The county zoning agency shall have 90 days to review the preliminary maps unless the review period is extended by written approval of

Register, July, 1980, No. 295
Environmental Protection

the department, but in no case shall the review period extend for more than 180 days.

3. The county zoning agency may hold public hearings, informational meetings or otherwise solicit public comment on the preliminary maps.

4. On or before the last day of the review period, the county zoning agency shall return the preliminary maps to the department. If the county zoning agency believes that the preliminary maps are inaccurate, discrepancies shall be noted on the maps with an accompanying narrative explaining the problem areas.

5. The department shall schedule a meeting with the county zoning agency within 30 days of the return of the preliminary maps if the county zoning agency has indicated that they believe that there are inaccuracies on the maps.

6. After meeting with the county zoning agency to discuss apparent map inaccuracies, the department shall evaluate the county recommendations and prepare the final Wisconsin wetland inventory maps for that county.

7. The adoption of a final Wisconsin wetland inventory map is a final decision of the department and may be reviewed as provided in ch. 227, Stats.

(b) *County adoption of shoreland-wetland zoning.* 1. Each county shall, within 6 months after receipt of final Wisconsin wetland inventory maps for that county from the department, zone all shorelands within the county that are designated as wetlands on the Wisconsin wetland inventory maps, in a shoreland-wetland zoning district.

2. Ordinance text and map amendments creating shoreland-wetland zoning districts shall be referred to the county zoning agency for public hearing as required by s. 59.97 (5) (e) 3., Stats.

3. The appropriate district office of the department shall be provided with a copy of the proposed text and map amendments and with written notice of the public hearing at least 10 days prior to such hearing.

(c) *Permitted uses in shoreland-wetland zoning districts.* Within shoreland-wetland zoning districts, counties may permit the following uses subject to the general requirements of sub. (3), the provisions of chs. 30 and 31, Stats., and other state and federal laws, if applicable:

1. Hiking, fishing, trapping, hunting, swimming and boating.

2. 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.

3. 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 silvicultural 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.

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 woodland tax law programs.

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

5. 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. Such use may include the maintenance of existing drainage ditches if protection against erosion, sedimentation and impairment of fish and wildlife habitat has been assured, and the construction and maintenance of roads which are necessary for agricultural cultivation, 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.

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

7. The construction and maintenance of nonresidential buildings used solely in conjunction with the raising of waterfowl, minnows, or other wetland or aquatic animals, not to exceed 500 square feet, provided that no filling, flooding, draining, ditching, tiling or excavating is done.

8. 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.

9. The establishment and development of parks and recreation areas, boat access sites, natural and outdoor education areas, historic and scientific areas, wildlife refuges and game preserves, provided that no filling is done. Ditching, excavating, dredging, dike and dam construction may be allowed in park or refuge areas for the purpose of improving wildlife habitat or to otherwise enhance wetland values.

10. The construction and maintenance of public utility facilities and transmission lines (such as electric, gas and telephone lines and water and sewer lines) 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.

(d) *Prohibited uses in shoreland-wetland zoning districts.* Any use not permitted in par. (c) 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. 59.97 (5) (e), Stats., and the procedures outlined in par. (e).

(e) *Rezoning of shoreland-wetland zoning districts.* 1. Official ordinance amendments are required for any change in shoreland-wetland zoning. Such amendments shall be made upon petition in accordance with provisions of s. 59.97 (5) (e), Stats.

2. The county clerk shall submit a copy of every petition for an amendment to a shoreland-wetland zoning district to the appropriate district office of the department within 5 days of the filing of such petition 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. 59.97 (5) (e) 3., Stats. The appropriate district 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. 144.26, 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 reasons 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 district office of the department shall be provided with:

Register, July, 1980, No. 295
Environmental Protection

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; and

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 section NR 115.06 (2) (c), that the county shoreland zoning ordinance if so amended would no longer comply with the requirements of s. 59.971, Stats., and this chapter, the department shall, after notice and hearing, adopt a complying ordinance for the county, under s. 59.971 (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. 59.971 (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. 59.971 (6), Stats., procedure is completed or otherwise terminated.

(3) ESTABLISHMENT OF ZONING REGULATIONS FOR SHORELAND AREAS. The shoreland zoning ordinance adopted by each county shall provide sufficient control of the use of shorelands to afford the protection of water quality as specified in chs. NR 102 and NR 103, Wis. Adm. Code. At a minimum, the ordinance shall include 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. 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. 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.

(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. Unless an existing development pattern exists, a setback of 75 feet, from the ordinary high-water mark of an adjacent body of water to the nearest part of a building or structure, shall be required for all buildings and structures, except piers, boat hoists and boathouses.

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

(c) *Trees and shrubbery.* The cutting of trees and shrubbery shall be regulated to protect natural beauty, control erosion and reduce the flow of effluents, sediments and nutrients from the shoreland area.

1. In the strip of land 35 feet wide inland from the ordinary high-water mark, no more than 30 feet in any 100 feet shall be clear-cut.

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

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

(d) *Filling, grading, lagooning, dredging, ditching and excavating.* Filling, grading, lagooning, dredging, ditching and excavating may be permitted only in accordance with the provisions of sub. (2), the requirements of ch. 30, Stats., and other state and federal laws where applicable, and only if protection against erosion, sedimentation and impairment of fish and wildlife habitat has been assured.

(e) *Nonconforming uses.* 1. The continuation of the lawful use of a building, structure or property, existing at the time an ordinance or ordinance amendment takes effect, which is not in conformity with the provisions of the ordinance or amendment shall not be prohibited, but the alteration of, addition to, or repair, over the life of the building or structure, in excess 50% of the equalized assessed value of an existing nonconforming building or structure may be prohibited.

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

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

4. 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.

(4) **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 the following factors should 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.

(5) **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 chapter NR 112, Wis. Adm. Code.

(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 section H 62.20, Wis. Adm. Code, and after June 30, 1980, be governed by a private sewage system ordinance adopted by the county under s. 59.065, Stats.

(6) **Adoption of administrative and enforcement provisions.** The shoreland ordinance adopted by each county shall provide for:

(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. 59.97, Stats., a board of adjustment, as authorized by s. 59.99, Stats., and a county planning agency, as defined in s. 236.02 (1), Stats., and required by s. 59.971 (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 district office of the department at least 10 days prior to hearings on proposed variances, special exceptions (conditional uses), appeals for map or text interpretations, and map or text amendments, and submission to the same office of the department of copies of decisions on variances, special exceptions (conditional uses), appeals for map or text interpretations, and map or text amendments within 10 days after they are granted or denied.

(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. 59.97 (11), Stats.

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

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80.

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. 144.26, 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. 59.971, Stats., and this chapter.

(2) **REVIEW AND APPROVAL OF SHORELAND ZONING AND LAND DIVISION ORDINANCES.** (a) Compliance with the requirements of s. 59.971, Stats., will be determined by the department by comparing the shoreland zoning and land division ordinance that has been enacted by a county with the minimum standards for shoreland regulation contained in section NR 115.05, Wis. Adm. Code. The department shall issue a certificate of compliance when a county has, in the opinion of the department, complied with s. 59.971, Stats., and this chapter.

(b) The department shall periodically reevaluate shoreland zoning and land division ordinances to ascertain their continuing compliance with section NR 115.05. A county shall keep its shoreland ordinance current, effective and workable to retain its status of compliance.

(c) The department shall review all proposed amendments to shoreland-wetland zoning districts pursuant to NR 115.05 (2) (e) 5., to ensure that an ordinance which is amended as proposed will retain its status of compliance with s. 59.971, Stats., and this chapter.

(3) **DETERMINATION OF NONCOMPLIANCE.** (a) Counties which do not have a shoreland zoning and land division ordinance in effect shall be deemed to be in noncompliance with s. 59.971, Stats., and this chapter. The department shall, pursuant to s. 59.971 (6), Stats., adopt an ordinance, after notice and hearing, if a county fails to either:

1. Proceed with the drafting and enactment of shoreland regulations within a given time period, or;

2. Contract with a consultant to draft the regulations within a given time period, or;

3. Cooperate with the staff of the department to draft the shoreland ordinance to be enacted by the county within a given time period. All costs for such action by the department shall be borne by the noncomplying county.

(b) Counties which have shoreland zoning and land division ordinances that do not meet the minimum standards contained in section NR 115.05, shall be deemed to be in noncompliance with the requirements of s. 59.971, Stats., and this chapter. If a county fails to modify its

ordinance to meet the minimum standards the department shall adopt an ordinance for the county, after notice and hearing, pursuant to s. 59.971 (6), Stats.

(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. 59.99 (4), Stats.; and

(c) May seek court review of the decisions of boards of adjustment, under s. 59.99 (10), Stats.

History: Cr. Register, July, 1980, No. 295, eff. 8-1-80.